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Lakshadweep Ground Water (Development and Control) Regulation, 2001

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The Lakshadweep Gazette

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ADMINISTRATION OF THE
UNION TERRITORY OF LAKSHADWEEP

OFFICE OF THE
SUPERINTENDING ENGINEER
LAKSHADWEEP PUBLIC WORKS DEPARTMENT

Kavaratti Island,
Dated : 14- 09 -2001.

NOTIFICATION

F.No. 4/3/93-Vol. III :- Dated 14-09-2001. The Regulation No. 1 of 2001 dated 6th August, 2001 issued by the Ministry of Law, Justice and Company Affairs (Legislative Department) is re-published for general information.

Sd/-
(K. S. MEHRA)
Administrator.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 6th August, 2001/Sravana 15, 1923 (Saka)

THE LAKSHADWEEP GROUND WATER
(DEVELOPMENT AND CONTROL) REGULATION, 2001

No. 1 of 2001

Promulgated by the President in the Fifty-second Year of the Republic of India.

A Regulation to provide for developing and controlling the extraction of ground water in the Union territory of Lakshadweep and for matters connected therewith or incidental thereto.

In exercise of the powers conferred by article 240 of the Constitution, the President is pleased to promulgate the following Regulation made by him:-

1. (1) This Regulation may be called the Lakshadweep Ground Water (Development and Control) Regulation, 2001.

(2) It extends to the whole of the Union territory of Lakshadweep

Short title,
Extent and
commence-
ment.

(3) It shall come into force on such date as the Administrator may, by notification, appoint and different dates may be appointed for different Islands, and any reference in any provision to the commencement of this Regulation shall be construed in relation to any Island as a reference to the coming into force of that provision in that Island.

Definitions.

2. In this Regulation, unless the context otherwise requires,-

(a) "Administrator" means the Administrator of the Union territory of Lakshadweep appointed by the President under article 239 of the Constitution;

(b) "Authority" means the Ground Water Authority constituted under sub-section (1) of section 3;

(c) "bye-laws" means the bye-laws made by the Authority under this Regulation;

(d) "collector well" means masonry or concrete well or well made with other suitable building materials, with side and bottom suitably sealed against seepage, for storing water through a number of infiltration (porous) pipes laid in a slop in one or all directions, for the purpose of skimming the water from top of water lens with coral island formations;

(e) "Fund" means the Fund constituted under section 19;

(f) "ground water" means the water which exists below the surface of the ground at any particular location;

(g) "Island" means an island as defined in clause (d) of section 2 of the Lakshadweep Island Councils Regulation, 1988;

Reg. 4 of
1988.

(h) "member" means the member of the Authority and includes Chairperson and Vice-Chairperson;

(i) "Official Gazette" means the Lakshadweep Gazette;

(j) "prescribed" means prescribed by rules made under this Regulation;

(k) "sink", with all its grammatical variations and cognate expressions in relation to a well, includes any digging, drilling or boring of new wells or deepening carried in the existing wells;

(l) "Union territory" means the Union territory of Lakshadweep;

(m) "user of ground water" means a person or persons or an institution including a company or an establishment, whether Government or not, who use ground water for any purpose including domestic use either on a personal or community basis;

(n) "well" means a well sunk for the search or extraction of ground water by a person or persons, except by the authorised officials of the Union territory or the Central Government for carrying out scientific investigations, exploration, development or management work for the survey and assessment of ground water resources or for providing water for irrigation and includes open well, dug well, borewell, dug-cum-borewell, tubewell, filter point, collector well and infiltration gallery.

3. (1) The Administrator shall, by notification in the Official Gazette, constitute for the purposes of this Regulation, an Authority to be called the Ground Water Authority.

Establishment of Ground Water Authority.

(2) The Ground Water Authority shall consist of-

(a) a Chairperson --Secretary (Public Works Department);

(b) a Vice-Chairperson --President-cum-Chief Counsellor,
District Panchayat,

to be appointed by the Administrator, {

(c) three official members consisting of Superintending Engineer (PWD), representative from Central Ground Water Board, Kerala Region and a representative from the Centre for Earth Science Studies, Trivandrum; and

(d) two non-official, members, Chairpersons of Village (Dweep) Panchayats.

(3) The term of office and the manner of filling up of the vacancies and other conditions of service of the Chairperson, Vice-Chairperson and other than *ex officio* members shall be such as may be prescribed.

4. (1) The Chairperson of the Authority shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and duties of the Authority as may be delegated to him by the Authority.

Powers and duties of Chairperson and Vice-Chairperson.

(2) The Vice-Chairperson of the Authority shall exercise and discharge such of the powers and duties of the Chairperson as may be delegated to him by the Authority.

5. (1) The Administrator may, for the purpose of enabling the Authority efficiently to discharge its functions under this Regulation, appoint such number of technical and other staff as he may consider necessary.

Staff of Ground Water Authority.

(2) The terms and conditions of service of such technical and other staff shall be such as may be determined by bye-laws.

6. (1) If the Administrator, on a report received from the Authority, is of the opinion that it is necessary or expedient in the public interest to control and regulate the extraction or use of ground water in any form in any Island, he may, by notification in the Official Gazette, declare any such Island to be a notified Island for the purpose of this Regulation with effect from such date as may be specified therein:

Power to notify Island for control and regulation of ground water development.

Provided that the date so specified in the notification shall not be earlier than thirty days from the date of publication of the said notification.

(2) Every such notification shall, in addition to its publication in the

Official Gazette, be published in not less than one daily regional language newspaper having wide circulation in the Union territory and also be served in such manner as the Administrator thinks fit and all or any of the following modes may be followed in effecting such service, namely:-

(a) by affixing a copy of the notification at some conspicuous part of the offices of the Amin Katcheris or Village (Dweep) Panchayat or office of the Civil Administrative Body located in the said Island;

(b) by proclaiming by the beat of drum or by means of loudspeakers the contents of the notification in the said Island;

(c) in such other manner as may be prescribed.

(3) If, in the opinion of the Authority, the availability of ground water has improved in a notified Island, it may advise the Administrator to denotify such Islands and the Administrator may do so after following the procedure laid down in sub-section (2) for notifying the Island.

Constitution of
Advisory
Committee.

7. (1) Subject to any rules made in this behalf, the Authority may from time to time constitute such Advisory Committees as may be necessary for the efficient discharge of its functions.

(2) Every Advisory Committee shall consist of such number of persons connected with ground water control and regulation as may be prescribed.

Prohibition of
direct pumping
of water from
well.

8. No person shall directly pump water from any well in any notified Island by using any electrically or mechanically operated equipment:

Provided that nothing in this section shall apply to pumping of water from collector well.

Grant of permit
to extract water
from well by
using motor.

9. (1) Any user of ground water desiring to pump water from well by using a motor in any notified Island in connection with any religious or customary ceremony or celebration or for any special purpose may make an application to the Authority for the grant of a permit for the purpose and shall not proceed with any activity connected with such pumping unless a permit has been granted by the Authority.

(2) Every application made under sub-section (1), shall be made in such form and shall contain such particulars and be accompanied by such fees, as may be prescribed.

(3) On receipt of an application under sub-section (1), the Authority may, after such inquiry as it deems fit, grant a permit to extract water from a well for such period as may be specified therein or, as the case may be, refuse a permit.

Provided that no person shall be refused a permit unless he has been given an opportunity of being heard:

Provided further that the decision regarding grant or refusal of a permit, as the case may be, shall be intimated by the Authority to the applicant within a period of thirty days from the date of receipt of the application.

(4) Every permit granted under this section shall contain such conditions as

may be prescribed.

10. (1) With effect from such date as the Administrator may, by notification in the Official Gazette, appoint any person desiring to sink a well in any notified Island for any purpose either on personal or community basis shall apply to the Authority for grant of a permit for this purpose, and shall not proceed with any activity connected with such sinking unless a permit has been granted by the Authority.

Grant of permit to extract and use ground water in notified Island.

Provided that no permit shall be required where the water is withdrawn by manual devices.

(2) Every application made under sub-section (1) shall be made in such form and shall contain such particulars and be accompanied by such fees, as may be prescribed.

(3) On receipt of an application under sub-section (1), if the Authority is satisfied that it shall be in the public interest so to do, it may grant, subject to such conditions and restrictions as may be specified, a permit authorizing the extraction and use of the water.

Provided that no person shall be refused a permit unless he has been given an opportunity of being heard.

(4) The Authority shall intimate its decision regarding grant or refusal of the permit to the applicant within a period of thirty days from the date of receipt of the application.

(5) In granting or refusing a permit under sub-section (3), the Authority shall have regard to-

- (a) the purpose or purposes for which water is to be used;
- (b) the existence of other competitive users;
- (c) the availability of water;
- (d) quality of ground water with reference to use;
- (e) such other relevant factors as may be prescribed.

(6) The permit shall be in such form as may be prescribed.

11. (1) Save as otherwise provided in this Regulation, no existing user after the date specified in the notification under sub-section (1) of section 6, commence or carry on use of the water except under and in accordance with the terms of certificate of registration granted in this regard:

Provided that a person carrying on the use of water before the date specified above, may continue to do so for a period of three months from such commencement; and if he has made an application for grant of certificate of registration within said period of three months till the disposal of such application.

(2) An application for grant of certificate of registration shall be made to the Authority in such form and shall contain such particulars and shall be accompanied by such fees as may be

Registration of existing users in notified islands.

prescribed.

- (3) On receipt of an application under sub-section (1), if the Authority is satisfied that it shall be in the public interest to do so, it may grant, subject to such conditions and restrictions as may be specified, a certificate of registration authorising the continued use of the water.

Provided that no person shall be refused a certificate of registration unless he has been given an opportunity of being heard.

- (4) The decision regarding the grant or refusal to grant the certificate of registration shall be intimated by the Authority to the applicant within a period of ninety days from the date of receipt of the application.
- (5) In granting or refusing to grant a certificate of registration under sub-section (3), the Ground Water Authority shall have regard to-
- (a) the purpose or purposes for which the water was being used;
 - (b) the existence of other competitive users;
 - (c) the availability of water; and
 - (d) such other relevant factors as may be prescribed.
- (6) The certificate of registration shall be in such form as may be prescribed.

Power to alter, amend or vary the terms of the permit or certificate of registration.

12. The Authority may, at any time, after the permit or certificate of registration, as the case may be, has been granted, for technical reasons, alter, amend or vary the terms of permit or certificate of registration, as the case may be, with a view to limiting the source of water either permanently or temporarily:

Provided that no such alteration, amendment or variation shall be made unless the permit holder or holder of a certificate of registration, as the case may be, has been given an opportunity of being heard:

Provided further that before taking such action, the Authority shall ensure that the standing crops are not damaged.

Explanation - For the purposes of this section, "technical reasons" means reasons which may adversely affect any public drinking water source or the shortage of quantum and pattern of rain fall or any other relevant factor which may affect the extraction of water from the ground.

Cancellation of permit or certificate of registration.

13. If the Authority is satisfied that-
- (a) the permit or a certificate of registration granted under sub-section (3) of section 9 or sub-section (3) of section 10 or sub-section (3) of section 11, as the case may be, has been obtained by fraud or misrepresentation as to an essential fact; or
 - (b) the holder of the permit or of a certificate of registration has without reasonable cause failed to comply with the conditions subject to which the permit or certificate of registration has

been granted or has contravened any of the provisions of this Regulation or of the rules made thereunder, or

- (c) a situation has arisen which warrants limiting the use or extraction of ground water,

then, without prejudice to any other penalty to which the holder of the permit or the holder of the certificate of registration may be liable under this Regulation, the Authority may, after giving the holder of the permit or certificate of registration an opportunity of showing cause, cancel the permit or certificate of registration, as the case may be.

Functions and powers of Ground Water Authority.

14. The functions of the Authority shall be to-

- (i) undertake and encourage research in the improvement or development and quality of ground water;
- (ii) collect and publish statistics relating to ground water;
- (iii) take a specimen of soils or other materials or water extracted from wells;
- (iv) inspect and take copies of the relevant records or documents and ask any question necessary for obtaining any information (including diameter or depth which is being or has been sunk, the level at which the water is or was struck and subsequently rest or rested, the types of strata encountered in the sinking of the well and the quality of the water struck) required for carrying out the purposes of this Regulation;
- (v) require by order in writing the person sinking a well to keep and preserve in the prescribed manner specimen of soils or any materials excavated therefrom for such period not exceeding three months from the date of completion or abandonment of the work as may be specified by the Authority and thereupon such person shall comply with such orders;
- (vi) serve or cause to be served a notice requiring any user of ground water to furnish such information or returns in such form at such intervals and with such particulars as may be prescribed and thereupon such person shall comply with such requisition;
- (vii) require the user of ground water to install water measuring devices on any water supplies when necessary to properly administer the water or where there is reason to believe that the user does not comply with the provisions contained in this Regulation or any other sufficient reason for defending the public interest.

Provided that where the user of ground water does not comply with the orders or requisition issued to him within a period of thirty days, the Authority itself may install such water measuring device and recover its cost from the defaulting user of ground water;

- (viii) require any user of ground water who does not comply with the provisions of this Regulation and rules framed thereunder to close down any water supply or destroy any hydraulic work found to be illegal under the provisions of this Regulation:

Provided that where the user of ground water does not comply with the orders or requisition issued to him within a period of sixty days, the Authority itself may carry out the necessary work and recover the cost from the illegal user of ground water.

Power to search
and seizure.

15. (1) An Executive Engineer authorised in this behalf by the Authority, may, if he has any reason to suspect that any provision of this Regulation has been, or is being, or is about to be, contravened-

- (a) enter at any reasonable time on any property (private or Government owned) with the right to investigate and make any measurement concerning the land or the water located on the surface or underground;
 - (b) inspect the well which is being sunk or has been sunk and the soils and other materials excavated therefrom;
 - (c) seize any electrical or mechanical equipment utilised for illegal sinking or pumping of water;
 - (d) enter and search at all reasonable times with such assistance, if any, he considers necessary, any place in which an offence under this Regulation has been or is being committed and order in writing the person who has or is committing the offence not to extract or use the ground water for a specified period not exceeding thirty days.
- (2) The power conferred by this section includes the power to break open the door any premises where sinking, extraction and use of ground water may be going on:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called upon to do so.

(3) The provisions of the Code of Criminal Procedure, 1973 shall so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the Authority of a warrant issued under section 94 of the said Code.

(4) Where the Executive Engineer seizes any electrical or mechanical equipment under clause (c) of sub-section (1), he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

Service of

16. (1) Where the serving officer delivers or tenders a copy of the order

orders etc.

made under clause (v) of section 14 or notice issued under clause (vi) of that section to the owner of the well, personally or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered in token of an acknowledgment of service endorsed on the original order or notice, as the case may be.

- (2) Where the owner of the well or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the owner who is absent from his residence at the time when the service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time, and there is no agent empowered to accept service of the order or notice on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the order or notice on the outer door or some other conspicuous part of the house in which the owner ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Authority from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed.

Payment to Authority.

17. The administrator may pay to the Authority in each financial year by way of grants or loans such sums of money as he may consider necessary for the efficient performance of its functions under this Regulation.

Power to receive gifts, grants etc.

18. The Authority may, for the purposes of this Regulation, receive gifts, grants, donations and benefactions from the Government or any other person.

Constitution of Ground Water Development Fund.

19. (1) There shall be constituted a fund to be called the Ground Water Development Fund and to which shall be credited-
- (a) the grants or contributions made by the Government;
 - (b) the income from investments;
 - (c) any donation made or loan advanced to the Authority for the purposes of this Regulation;
 - (d) all sums received by the Authority from such other sources as may be decided upon by the Administrator.
- (2) The Fund shall be applied for-
- (a) payment of the salaries, allowances and other remuneration of the Chairperson, Vice-Chairperson and members, technical and other staff of the Authority;
 - (b) meeting other expenses of the Authority to be incurred by it in the performance of its functions under this Regulation.

Budget.

20. The Authority shall prepare in such form and at such time in each financial year as may be prescribed, its budget for the next financial year showing the estimated receipts and expenditure and forward it to the Administrator.

- Borrowing powers of the Authority.** 21. The Authority shall have the power to borrow money on the security of the Funds or any other assets for carrying out the purposes of this Regulation in such manner as may be prescribed.
- Accounts and audits.** 22. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the profit and loss account and the balance-sheet, in such form as may be prescribed.
- (2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred in connection with such audit shall be payable by the Authority.
- Delegation of powers and duties.** 23. The Authority may, by general or special order in writing, direct that all or any of the powers or duties which may be exercised or discharged by it, shall, subject to such conditions, if any, as may be specified in such order (except sections 30 and 31), be exercised or discharged also by any employee of the Authority specified in this behalf.
- Members and employees of the Ground Water Authority to be public servants.** 24. All members and employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Regulation, to be public servants within the meaning of section 21 of the Indian Penal Code.
- Protection against action taken in good faith.** 25. No suit, prosecution or other legal proceedings shall lie against the Administrator or the Chairperson or the Vice-Chairperson of the Authority or any member or other employee of the Authority for anything which is in good faith done or intended to be done under this Regulation or the rules and bye-laws made thereunder.
- Cognizance and trial of offences.** 26. (1) No prosecution shall be instituted against any person in respect of any offence under this Regulation without the previous sanction of the Authority or such officer as may be authorised by that Authority by order in writing in this behalf;
- (2) No court inferior to that of a Judicial Magistrate of the First class shall try any offence punishable under this Regulation.
- Offences and penalties.** 27. (1) If any user-
- (a) contravenes or fails to comply with any of the provisions of this Regulation or any rules made thereunder, or
- (b) obstructs the Authority or any other person authorised by it from exercising any of the powers under this Regulation, or
- (c) fails to comply with the orders made under clause (v) of section 14, or
- (d) having been required to furnish any information or return under clause (vi) of section 14-