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M.C. Mehta vs. Union of India (Groundwater case), 1996

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Case Note: Case concerning the regulation of groundwater use and development. The Supreme Court has ordered the central government to constitute an authority to regulate groundwater use and development under the Environment (Protection) Act, 1986.

IN THE SUPREME COURT OF INDIA

(BEFORE KULDIP SINGH AND S. SAGHIR AHMAD, JJ.)

M.C. MEHTA

.. Petitioner;

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

I.A. No. 32 in W.P. (C) No. 4677 of 1985

Decided on 10 December 1996

Alternate Citation: (1997)11 SCC 312.

ORDER

1. This Court on 20-3-1996 took notice of the news item under the caption “*Falling Groundwater Level Threatens City*”, appearing in the *Indian Express* of 18-3-1996. This Court issued notice to the Central Groundwater Board and the Delhi Pollution Control Committee. The news item was brought to the notice of this Court by Mr. M.C. Mehta, Advocate. On 3-4-1996, this Court issued notice to the Municipal Corporation of Delhi and the Delhi Waterworks and Sewerage Disposal Undertaking.

2. Dr P.C. Chaturvedi, Scientist ‘D’ (Director), Central Groundwater Board, filed an affidavit pursuant to this Court’s order. He stated in the affidavit that during the years from 1962 onwards, the water levels in the country are declining. So much so, during the years 1971-83, the fall in water level was from 4 m to 8 m in the National Capital Territory. There was a further fall of water level from 4 m to more than 8 m during the period 1983-85. One of the reasons stated in the affidavit for the decline of water level was the enhanced pumpage. Keeping in view the facts stated by Dr Chaturvedi, this Court issued notice to the Union of India through the Secretary, Ministry of Water Resources and to the Government of NCT, Delhi, through its Chief Secretary. Various authorities have filed affidavits indicating the factual position regarding the fall of water levels in the country.

3. This Court by the order dated 4-9-1996, requested Dr P. Khanna, Director, NEERI, to have the matter examined at the Institute level by experts in the field and to file a report in this Court. The NEERI was asked to give suggestions and recommendations for checking further decline of underground water level. NEERI filed the examination report dated 23-9-1996 regarding “Water Resources Management in India, Present Status and Solution Paradigm”. Mr Arun Kumar, Additional Secretary, Ministry of Water Resources, filed an affidavit dated 24-10-1996, commenting on the NEERI Report and also indicating an overall picture of the declining water levels in the country and also the various schemes and activities undertaken by various Departments of Government of India to monitor the groundwater. The relevant paragraphs of the affidavit are as under:

“4.2 It may be pointed out that the main reason for gradual decline in the level of groundwater in certain areas of the country is over-exploitation. Presently the control being exercised in the country for regulating groundwater development is in the form of indirect administrative measures being adopted by institutional finance agencies who by and large insist on technical clearance of the schemes from authorised groundwater departments of the respective States. These departments in turn look into the various aspects of groundwater availability. Another control imposed by the institutional agencies, availing financing facilities from National Bank for Agriculture and Rural Development is by way of prescribing spacing criteria between the groundwater structures. Yet another method of indirect control is by way of denial of power connections for the pump-sets financed through loans from banks. However, in the absence of any law, the administrative measure do not prevent affluent farmers from constructing wells in critical areas. An affluent farmer with his large capital investment can construct a high capacity well which affects shallow wells in the neighbourhood. In order to arrest the depleting trend and to avoid indiscriminatory withdrawal of groundwater, the Government of India had circulated a Model Bill to the States/Union Territories in 1970 to help them to bring out suitable legislation on the lines of the Model Bill to regulate and control the development of groundwater in their respective areas.

5. This para outlines the need for regulation and extraction of groundwater and lays emphasis on integrated water resources management including regulation on land use and proposed agriculture practices, human settlement pattern etc. The number of overexploited blocks mentioned as more than 120 may have to be corrected as 231 blocks, 6 mandals and 12 taluks. As regards problems of degraded lands, the Department of Agriculture and Cooperation implements schemes for reclamation of degraded land, namely, alkaline, sodic lands and saline soils. According to estimates, 8.53 million ha of the country is suffering from water-logging, 3.58 million ha is under alkalinity and 5.50 million ha area is saline and under coastal salinity. For treatment of alkaline soil, a centrally sponsored scheme of Reclamation of Alkaline Soil is being implemented in the country covering the States of Haryana, Punjab, U.P., M.P., Gujarat and Rajasthan. Besides, there is a World Bank-funded project with an outlay of Rs 313 crores for reclamation of sodic land in the State of U.P. Additionally, an EEC-funded project for reclamation of alkaline soil is under implementation in the States of U.P. and Bihar.”

4. This Court on 21-11-1996 passed the following order:

“We have heard learned counsel for quite some time. We have also been assisted by Mr L.B. Karan, Deputy Secretary, Ministry of Water Resources, Government of India. Mr N. Kitto, Director, Central Groundwater Board and Mr S.B. Singh, In-charge, Delhi State Unit, Central Groundwater Board are also present.

We have considered various suggestions for the purpose of controlling/regulating the underground water resources. One of the suggestions under consideration is to accept the NEERI recommendation and constitute an Authority under Section 3(3) of the Environment (Protection) Act, 1986. The purpose can only be achieved if it can be done on all-India basis. Mr I.B. Karan states that he would prepare a note keeping in view the proceedings of this Court today, consult the

authorities concerned including the Secretaries of the Ministries concerned and come back to this Court on 28th November, 1996. Adjourned to 28th November, 1996.”

This Court on 5-12-1996 passed the following order:

“Pursuant to this Court’s order dated November 21, 1996, Mr Arun Kumar, Additional Secretary, Ministry of Water Resources, Government of India, has filed affidavit dated November 27, 1996. It is stated that because of the reasons given in the affidavit it would not be possible to have a workable mechanism by appointing authorities under Section 3(3) of the Environment (Protection) Act, 1986 (the Act). We do not wish to comment on the stand taken in the affidavit. We are prima facie of the view that the Act being an Act made by Parliament under Entry 13 List I read with Article 253 of the Constitution of India, it has an overriding effect. It is not necessary for us to go into this question.

Mr Mehta has placed before us organisational chart which shows that the Central Groundwater Board has its offices almost all over the country. The Board consists of a Chairman, four Members, Director — Administration and a Finance & Accounts Officer. The Board has Regional Directorates spread all over the country. Each region has further functional capacity of the Central Groundwater Board. We are of the view that the Central Government may consider issuing a notification constituting the Board itself as an Authority under Section 3(3) of the Act. With the notification designating the Board as an authority under the Act, it would have all the statutory powers under the Act and it would be in a position to have effective control all over India. Needless to say that any Institution/Department constituted by the State Government can independently function in its own field with the cooperation and under the guidance of the organisation set up by the Central Groundwater Board. Learned counsel states that he would have the response of the Secretary, Ministry of Water Resources by the next date of hearing.”

5. Mr Arun Kumar, Additional Secretary, Ministry of Water Resources, Government of India, has filed affidavit dated 9-12-1996. It is stated in the affidavit that the suggestion to declare Central Groundwater Board as an Authority under the Environment (Protection) Act, 1986 (the Act) for the purpose of regulating and control of groundwater development has been considered by the Ministry of Water Resources and it has been decided to comply with the suggestions made by this Court. It has further been stated in the affidavit that the organisational presence of the Board in the country is not so extensive or adequate to undertake the additional burden desired by this Court. It is stated that the regulation and control of groundwater is the responsibility of the State Government, as water is a State subject. Keeping the present organisational status of the Board, it is stated that the Board will have to be expanded and strengthened adequately to enable it to discharge its added responsibilities. The exact infrastructure for this purpose will have to be worked out. The affidavit further states that the Central Groundwater Board will collaborate and coordinate with the State authorities in the regulation and control of groundwater development.

6. The NEERI in paras 6 and 7 of its report has given holological approach to Water Resources Management, which is reproduced hereunder:

“6. *Holological Approach to Water Resources Management.*—The salient

features of the holological approach of Water Resources Management are presented in Fig. 1, and include:

- * Sustainable solutions to water-resource and land-use problems through appropriate technological interventions, and supply and demand management options
- * Regulation on exploitation through legislation and effective administration with focus on water conservation, recycle/reuse, restrictions to ensure equitability in water availability and pragmatic land use
- * Regulation by education, i.e., by creating awareness amongst the people to enable their participation and traditional knowledge in sustainable water resource management.

Management of water resources to achieve overall aspirational goal of sustainable development warrants legal interventions based on the principles of inter and intra-generational equity, the precautionary principle, conservation of natural resources and environmental protection. There is thus adequate reason to take recourse to the Sections 3, 4 and 5 of the Environment (Protection) Act, 1986 for implementing holological approach to water resources management.

In order to address the complex issues in water resource management it is prudent that the Central Government considers constituting an authority under the Environment (Protection) Act, 1986 and confers on this authority all the powers necessary to deal with the situation created by the depletion of groundwater levels, dwindling surface water resources, deterioration of surface and groundwater quality and haphazard land use. The authority should be headed by a retired (*sic*) with expertise in the field of hydrology, hydrogeology, information technology.

7. *Recommendations:* A Central Water Resource Management Authority, with the composition as delineated in Section 6 above, with mandate for coordination and implementation of all activities of planning, development, allocation, implementation, research and monitoring of all water resources need to be established to promote intra and inter-generational equity, as also to operationalise the precautionary principle in sustainable water resource management. All the States need to constitute similar authorities with functions in the State as of the Central Authority. The mandate of the authority needs to include the following:

- * To deploy river basins as the basis for regional planning for sustainable water resource management (along with commensurate land use)
- * To prepare medium and long-term national land use plans inter alia including agricultural practices, human settlement patterns and industrial typology in consultation with Ministries/Departments concerned based on the regional water supportive capacity
- * To assess the present irrigation practices and cropping patterns, with respect to high water consuming crops and lay down National

Agricultural Water Use Policy to encourage judicious use of water resources

- * To keep under review groundwater levels and quality, and surface water quantity and quality to devise and implement pragmatic strategies at plan and programme levels
- * To ensure maintenance of minimum flows in the rivers so as to fulfil the riparian rights, to protect the flood plains, to as also to protect the vital ecological functions of the rivers
- * To ensure techno-economic feasibility and to implement programmes on reuse of appropriately treated sewage for agriculture, reuse of industrial wastewaters as industrial process water, use of treated sewage in social forestry and public parks in municipal areas and reuse of treated wastewater in new housing complexes for non-consumptive usages
- * To protect, conserve and augment traditional water retaining structures
- * To protect, conserve and augment natural and manmade wetlands in the country
- * To promote rain water harvesting in human settlement practices, particularly in cities with more than 10 lakh population in arid/semi-arid regions
- * To promote and implement modern and traditional water harvesting technologies to ensure minimal expenditure in groundwater harnessing
- * To design and implement programmes to arrest alarming rates of decline in snowline in the country
- * To ensure catchment area treatment, including construction of checkdams, contour bunding, control of river bank erosion and plantation of endemic fast-growing tree species to arrest soil and water loss in all river basins
- * To ensure implementation of afforestation programmes for achieving a minimum of 33% forest cover as per the National Forest Policy, 1988
- * To prepare and implement guidelines on water rate structure for various water usages commensurate with the production and scarcity value of the resource
- * To ensure community participation with a view to harnessing traditional knowledge at all stages in the holological approach to water resource management.”

7. Mr M.C. Mehta and Mr Ranjit Kumar, learned counsel assisting us in this matter have vehemently contended that keeping in view the declining level of underground water all over the country, it is necessary to regulate withdrawal of the underground water. It is no doubt correct that there are legislations in some of the

States to regulate the water resources development, but by and large, the underground water is being exploited all over the country without any regulations. It has, therefore, been rightly suggested by NEERI in its Report that an Authority under the Act be constituted with the powers necessary to deal with the situation created by the depletion of the groundwater levels, dwindling surface water resources, deterioration of surface and groundwater quality and haphazard land use.

8. We therefore, order and direct as under.

9. The Central Government in the Ministry of Environment 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.

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.

14. The interlocutory application is disposed of with the above directions.