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The Karnataka Ground Water (Regulation for Protection of Sources of Drinking Water) Act, 1999

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THE KARNATAKA GROUND WATER (REGULATION FOR PROTECTION OF SOURCES OF DRINKING WATER) ACT, 1999

STATEMENT OF OBJECTS AND REASONS

Government of India had circulated a model Bill for regulation of extraction of Ground Water in the year 1990-91. The Central Government have since then repeatedly been urging the State Government, to pass an appropriate legislation to introduce regulatory measures to protect sources of drinking water in rural areas. The Government of Maharashtra and the Government of Andhra Pradesh have passed Ground Water (Regulation for Drinking water purposes) Act in the year 1993 and 1996 respectively.

The Karnataka Ground Water (Regulation for protection of sources of Drinking water) Bill, 1999 is proposed to be enacted with several regulatory measures as summerised below:

- (i) Sinking a well for the purpose of extracting or drawing water within a distance of 500 metres from a public drinking water source without obtaining permission of the Appropriate authority is prohibited.
- (ii) The Appropriate authority, in times of water scarcity may declare an area to be a water scarcity area for such period as may be specified in the order, but not exceeding one year at a time.
- (iii) Upon declaration of any area as water scarcity area, the Appropriate authority may order for restricting or prohibiting extraction for any purpose where such well is within 500 metres of the public drinking water source.
- (iv) The Appropriate authority on the advice of the technical officer may declare a watershed as over exploited watershed.
- (v) The Appropriate authority shall have powers to prohibit sinking of wells in over exploited watersheds.
- (vi) If the Appropriate authority is satisfied that any existing well in area of an over exploited watershed is already affecting any public drinking water source may prohibit the extraction of water from such well during the period from February to July every year and other incidental matters.

Hence the Bill.

[L.C. Bill No. 6 of 1999]

(Entries 17 and 18 of List-II of Seventh Schedule to the Constitution of India)

KARNATAKA ACT NO 44 OF 2003

(First Published in the Karnataka Gazette Extra-ordinary on the Twenty seventh day of October, 2003)

THE KARNATAKA GROUND WATER (REGULATION FOR PROTECTION OF SOURCES OF DRINKING WATER) ACT, 1999

(Received the assent of the President on the Seventeenth day of October, 2003)

An Act to regulate the exploitation of ground water for the protection of public sources of drinking water and matters connected therewith and incidental thereto.

Whereas it is expedient to regulate the exploitation of ground water for the protection of public sources of drinking water and to provide for matters connected therewith and incidental thereto.

Be it enacted by the Karnataka State Legislature in the fiftieth year of the Republic of India as follows.

CHAPTER - I
Preliminary

1. Short title extent and commencement.- (1) This Act may be called the Karnataka Ground Water (Regulation for Protection of Sources of Drinking Water) Act, 1999.

(2) It extends to the whole of the State of Karnataka.

(3) It shall come into force on such date as the State Government may, by notification appoint and different dates may be appointed for different local areas or different provisions of this Act.

2. Definitions.- In this Act unless the context otherwise requires.-

(1) “appropriate authority” means the Deputy Commissioner and includes any officer, not below the rank of an Assistant Commissioner as the Government may by notification appoint for the purposes of this Act, and different officers may be appointed for different local areas of the State.

(2) “drinking water purpose” means consumption or use of water by human population for drinking and for other domestic purposes; and includes consumption of water for similar such relevant purposes for live stock.

Explanation.- For the purpose of this clause, the expression “domestic purposes” shall include consumption or use of water for cooking, bathing, washing, cleansing and other day-to-day activities.

(3) “Government” means the State Government.

(4) “Ground water” means water existing in an aquifer below the surface of the ground at any particular location regardless of the geological structure in which it is stationary or moving and includes all ground water reservoirs.

- (5) "Local Authority" means and includes a Municipal Corporation, Municipal Council, Zilla Panchayat, Taluk Panchayat, Grama Panchayat, Town Panchayat, Industrial Township, Improvement Board, Urban Development Authority and Planning Authority, Bangalore Water Supply and Sewerage Board, Karnataka Urban Water Supply and Drainage Board constituted under any law for the time being in force;
- (6) "Over exploited Water Shed" means a water shed where the estimated annual ground water extraction is more than eighty five percent of the estimated average annual ground water recharge, calculated in the prescribed manner, and declared as such under section 6;
- (7) "Public source of drinking water" means a well from which the Government or a local authority or such authority as the Government may, by notification specify, provides water to the public and includes such point or any other drinking water sources as may be notified by appropriate Authority;
- (8) "public water supply systems" means the structures relating to a public drinking water source, including conveying pipelines, storage reservoir, stand posts, hand pump, power pump and all other materials connected thereto, through which water is supplied for drinking water purpose;
- (9) "requisite quantity of water" means the quantity of water calculated on the basis of per capita supply to be fixed by the Government from time to time;
- (10) "Sink" with all its grammatical variations and cognate expressions, in relation to a well, includes any drilling, boring or digging of a new well or deepening carried out to an existing well;
- (11) "Technical officer" means an officer of the Department of Mines and Geology, Government of Karnataka not below the rank of a Geologist;
- (12) "Water scarcity area" means an area declared as such under section 4;
- (13) "Watershed" means an area confined within the topographic water divide line as identified and notified by the Ground water Survey, Division of the Department of Mines and Geology, Government of Karnataka from time to time having regard to the purposes of this Act;
- (14) "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 State or Central Governments for carrying out scientific investigations, exploration, development, augmentation, conservation, protection, or management works and shall include open well, dug well, borewell, dug-cum-borewell, tubewell, filter points, collector well and infiltration gallery or any of their combinations or variations;

CHAPTER - II

Protection Measures for Public Sources of Drinking Water

3. Permission to sink well etc.- (1) No person shall without obtaining permission from the appropriate authority under sub-section (3), sink any well for purpose of extracting or drawing water within five hundred metres of public source of drinking water; Provided that nothing in this sub-section shall apply to sinking of a well on behalf of the Government or a local authority for being used as a public drinking water source.

(2) Any person desirous of obtaining permission under this section shall make an application to the appropriate authority in such form and accompanied by such fees as may be prescribed.

(3) On receipt of an application under sub-section (2), the appropriate authority may, on the advice of the Technical Officer, and having regard to the interest of the general public to have the supply of requisite quantity of water for the purpose of drinking water from the public sources: and for reasons to be recorded in writing grant permission for sinking of well or reject the application.

(4) Every permission granted under sub-section (3) shall be subject to,-

- (a) the condition that the appropriate authority may, for reasons to be recorded in writing by order prohibit, restrict or regulate from time to time the extraction of water from such well, if in its opinion it is necessary to do so in the interest of protection of public sources of drinking water.
- (b) such other conditions and restrictions as may be prescribed.

4. Declaration of water Scarcity area.- If, at any time during the course of monsoon or thereafter, the appropriate authority on the advice of the Technical Officer and having regard to the quantum and pattern of rainfall and any other relevant factor, is of the opinion that the public sources of drinking water in any area within its jurisdiction are likely to be adversely affected, it may, by order declare such area to be a water scarcity area for such period as may be specified in the order, but not exceeding one year at a time.

5. Regulation of extraction of water from wells in water scarcity area.- (1) Upon declaration of any area as water scarcity area under section 4, the appropriate authority may for the duration of the period of water scarcity, by order, regulate the extraction of water from any well in such area by restricting or prohibiting such extraction for any purpose where such well is within a distance of five hundred meters of the public source of drinking water:

(2) The order imposing such restriction or prohibition under sub-section (1) shall be served or caused to be served personally by delivering or tendering the same to the owner of the well at least fifteen days before the commencement of the order of restriction or prohibition, as the case may be. Where the owner cannot be found, an authentic copy of the order may be served on any adult member of the family. In the case of an order affecting a corporation or a firm, it shall be served in the manner for the service of a summon under rule 2 of order XXIX or rule 3 of order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908.

6. Declaration of over-exploited watershed.- (1) The appropriate authority may, on the advice of the Technical Officer, declare a watershed as over exploited water shed.

(2) If at any time, the appropriate authority, on the advise of technical officer is satisfied that the availability of ground water has improved in an over exploited water shed it may by notification cancel the declaration made under sub-section (1).

7. Prohibition for sinking wells in over-exploited watershed.- (1) No person shall, without obtaining permission of the appropriate authority under sub-section (3) sink well for any purpose within the area of an over-exploited water shed:

Provided that nothing in this sub-section shall apply to sinking of a well on behalf of the Government or a local authority for being used as a public source of drinking water.

(2) Every application for permission under this section shall be made to the appropriate authority in such form and accompanied by such fees as may be prescribed.

(3) The appropriate authority may, on receipt of the application and having regard to the requirement of water for purposes of providing drinking water and in the interest of general public either grant permission to sink well or reject the application.

(4) Every permission granted under this section shall be subject to,-

- (a) the condition that the appropriate authority may, for reasons to be recorded in writing, by order prohibit, restrict or regulate the extraction of water from such well for such period as may be specified in such order, if in its opinion, it is necessary to do so in the interest of protection of public sources of drinking water: and
- (b) such other conditions and restrictions, as may be prescribed.

8. Prohibition of extraction of water from an existing well for certain period.- If , on the advice of the Technical Officer, the appropriate authority is satisfied that any existing well in area of over exploited watershed is adversely affecting any public source of drinking water, it may, notwithstanding anything contained in any law for the time being in force and having regard to the quantum and pattern of rainfall and other relevant factor and after giving its owner a reasonable opportunity of being heard, by an order, prohibit the extraction of water from such well during the five months period from the First February to thirty-first July every year.

9. Closing down of existing well.- Notwithstanding anything contained in this Act or any other law for the time being in force, if on the advice of the Technical Officer, the appropriate authority is satisfied that any existing well in the area of an over-exploited watershed is adversely affecting any public source of drinking water and such source cannot be adequately protected by action under section 8, it may, after giving the owner of the well a reasonable opportunity of being heard, require him by order to stop the extraction of water from, and close, seal off, such well forthwith either temporarily or permanently having regard to the extent to which it is adversely affecting the public source of drinking water.

10. Power of entry upon any land for obtaining information.- Whenever it is necessary to make an inquiry or examination in connection with the protection of a public source of drinking water or with the maintenance of a public water supply system, the appropriate authority or any officer duly authorised by it in this behalf may, after giving prior notice.-

- (a) enter upon such land as he or it may think necessary for the said purpose;
- (b) undertake surveys or take levels thereon;
- (c) conduct pumping tests and geophysical surveys;
- (d) conduct well logging on the bore;

- (e) install and maintain water level recorder and water gauges on the well; and
- (f) do all such other things as may be necessary for the prosecution of such inquiry and examination.

11. Power to stop contravention of the provisions of section 3, 5, 7, 8 or 9.- (1)

Wherever it appears to the appropriate authority that any well has been sunk or is being sunk in contravention of the provisions of section 3 or 7 or water has been extracted or is being extracted in contravention of section 8 or 9 the appropriate authority or an officer duly authorised by it in this behalf may enter upon that land, remove obstruction, if any, close the pumping of the water, disconnect power supply, seize any material or equipment used in connection with such extraction of water and take any such action, as may be required to stop such contravention, and may, by order, require the owner or the person in possession of the well to close or seal off the well at his expenses and in such manner as the appropriate authority may specify in such order and such owner or person shall comply with such order.

(2) Where such owner or person fails to comply with any order made under sub-section (1), the appropriate authority may, after giving such owner or persons due notice in that behalf, enter upon the land and close or seal off the well and the cost incurred thereof shall be recoverable from such owner or person as an arrears of land revenue.

12. Payment of compensation.- (1) Where an order of closing down or sealing off the well is made under section 9, the owner of such well may apply to the appropriate authority in the prescribed manner for payment of compensation.

(2) The Appropriate Authority may, on making such inquiry and requiring the owner to produce such evidence as it may deem necessary, make an order for payment of compensation to the owner at the market price, determined in accordance with the provisions of the Land Acquisition Act, 1894.

13. Bar to claim compensation.- Subject to the provisions of section 12, no person shall be entitled to claim any damages or compensation from the Government for any loss sustained by him as a result of any order passed under the clause(a) of sub-section(4) of section 3 or under sections 8, 9, or 11 or by virtue of any action taken under this Act.

CHAPTER - III **Miscellaneous**

14. Appeals.- (1) Any person aggrieved by any order, made by the Appropriate Authority under any of the provisions of this Act may, within a period of thirty days from the date of receipt of the order by him, appeal to the Deputy Commissioner, if the order is made by any officer other than the Deputy Commissioner and to such authority, as may be prescribed, if the order is made by the Deputy Commissioner. On receipt of such appeal, the Appellate Authority shall, after giving a reasonable opportunity to the appellant of being heard, pass such order as it may think fit. Every order made by the Appellate Authority in such appeal shall be final and shall not be called in question in any court.

(2) Before giving any decision in such appeal the appellate authority shall obtain the views of such officer of the Department of Mines and Geology as may be prescribed, and shall take such views into consideration.

(3) Save as otherwise provided in sub-section (1), every order made and every direction issued under this Act shall be final and shall not be called in question in any court.

15. Protection of action taken in good faith.- (1) No suit, prosecution or other legal proceeding shall lie against any public servant or person appointed or authorised under this Act in respect of anything done or intended to be done in good faith under this Act or in pursuance of any order made or directions issued under this Act.

(2) No suit, prosecution or other legal proceeding shall lie against the Government or any Officer of the Government for any damage caused or likely to be caused by anything done or intended to be done in good faith under this Act or in pursuance of any order made or direction issued under this Act.

16. Penalty.- (1) Whoever contravenes any of the provisions of this Act or obstructs any person in the discharge of his duties under this Act or contravenes any order or violates any rule made under this Act shall, on conviction, be punished with imprisonment which shall not be less than one month but which may extend to six months or with fine which shall not be less than one thousand rupees but may extend to five thousand rupees or with both.

(2) Whoever, without proper authority, damages, alters or obstructs any part of the public water supply system shall on conviction, be punished with imprisonment which shall not be less than two months but which may extend to one year or with fine which shall not be less than two thousand rupees but may extend to five thousand rupees or with both.

(3) In the case of a continuing offence, the offender shall be punished with an additional fine which may extend to rupees hundred for every day during which offence continues after the conviction.

17. Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section(1) where an offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section.-

- (a) “company” means a body corporate, and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm means partner in the firm.

18. Overriding effect of Act.- The provisions of the Act and the order issued or made thereunder shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

19. Method of service of notices etc. (1) Subject to such rules as may be prescribed, service of any notice or other document under this Act or any Order made thereunder, on any person to whom it is by name addressed shall be effected.-

- (i) by giving or tendering the said notice or document or a copy of the said order to such person; or
- (ii) if such person is not found, by leaving such notice or document or copy of the order at his last known place of residence or business or by giving or tendering the same to some adult member or servant of his family; or
- (iii) by sending such notice or document or the copy of the order to such person by registered post; or
- (iv) by affixing such notice or document or copy of the order on some conspicuous part of his house, if any in which such person is known to have last resided or carried on business or personally worked for gain.

(2) No such notice shall be deemed to be void on account of any defect of form.

20. Power to make rules.- (1) The Government may by notification and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide, for,-

- (a) the form of application under sub-section (2) of section 3 and the fees to be paid in respect of such application;
- (b) the conditions and restrictions under clause (b) of sub-section (4) of section 3;
- (c) the form of application under sub-section(2) of section 7 and the fees to be paid for such application;
- (d) the restrictions and conditions under clause (b) of sub-section (4) of section 7;
- (e) the manner of applying for payment of compensation under section 12 and payment of fees for applying for payment of compensation;
- (f) any other matter for which rules have to be made or are necessary.

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the session or sessions immediately following, both Houses agree in making any modification in the

rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

21. Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by order, do anything, which appears to it to be necessary or expedient to remove the difficulty:
Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.