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The Pondicherry Ground Water (Control and Regulation) Act, 2002

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GOVERNMENT OF PONDICHERRY
LAW DEPARTMENT
NO.105/Leg./2002-LD.
Pondicherry, the 20 th February 2003.

The following Act of the Legislative Assembly, Pondicherry received the assent of the President of India, on the 23 rd January, 2003 and is hereby published for general information.

**THE PONDICHERRY GROUND WATER
(CONTROL AND REGULATION) ACT, 2002**

(Act No. 2 of 2003)
[23-1-2003]

**A N
A C T**

to regulate and control the development of ground water and for matters connected therewith

BE it enacted by the Legislative Assembly of Pondicherry in the Fifty-third Year of the Republic of India as follows; ____

1. Short title, extend and commencement

- (1) This Act may be called the Pondicherry Ground Water (control and Regulation) Act, 2002.
- (2) It shall extend to the whole of the Union Territory of Pondicherry.
- (3) It shall come into force on such date as the Government may, by notification in the official gazette, appoint and different dates may be appointed for different areas in the Union Territory of Pondicherry.

2. Definitions In this Act, unless the context otherwise requires, ____

- (a) “Authority” means Ground Water Authority established in accordance with section 3 of the Act;
 - (b) “Government” means the Administrator of the Union Territory of Pondicherry appointed by the president under article 239 of the Constitution;
 - (c) “Ground water” means the water which exists below the surface of the ground at any particular location in any land;
 - (d) “Notified area” means any area to which this Act applies;
 - (e) “Prescribed” means prescribed by rules made under this Act;
 - (f) “Sink” with all its grammatical variations and cognate expression in relation to a well includes any digging, drilling or boring of new wells or deepening carried to the existing wells;
 - (g) “User of ground water” means the person or persons or an institution including a company or an establishment, whether Government or not, who or which use ground water for any purpose including domestic use made either on a personal or community basis or industrial use;
 - (h) “Well” means a well sunk for the search or extraction of ground water by a person or persons except by the authorized officials of the Union Territory of Pondicherry 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, bore well , dug- cum -bore well , tube well, filter point, collector well and infiltration gallery;
- Provided that it will exclude the person or persons who use ground water drawn from a well by manual devices, e.g ., hand pump or rope and bucket.

3. Establishment a Ground water Authority

- (1) The Government shall, by notification in the official gazette, establish with effect from such date as may be specified in the notification, an authority to be known as Ground Water Authority.
- (2) The Ground Water Authority shall consist of—
 - (a) A Chairman to be appointed by the Government;
 - (b) Five official members of the departments of the Government dealing with survey, exploration, development, management and protection of ground water, to be appointed by the Government.

(c) Three non-official members who, in the opinion of the Government, have special knowledge or practical experience in matters relating to ground water, to be appointed by the Government

(3) The term of office and the manner of filling the vacancies and other conditions of service of the Chairman and other members shall be in such manner as may be prescribed.

4. Staff of the Ground water appoint Authority

(1) The Government may, for the purpose of enabling the Ground Water Authority to perform its function efficiently or exercise its powers under the Act, such number of technical personnel and other staff as it may consider necessary.

(2) The functions and the terms and conditions of service of such employees shall be such as may be prescribed.

5. Powers of water Government to issue directions and powers to notify areas or control of Ground water Development

(1) The Government may from time to time, issue to the Ground Water Authority such directions as it may think necessary in the public interest

(2) Without prejudice to the foregoing provisions, the Ground Water Authority shall, in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Government may give in writing to it from time to time;

Provided that the Ground Water Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(3) The decision of the Government whether a question is one of policy or not shall be final.

(4) If the Ground Water Authority is of the opinion that it is necessary or expedient in the public interest to control and/or regulate the extraction or the use or both of ground water in any form in any area, it will advise the Government to declare any such area to be a notified area for the purposes of this Act with effect from such date as may be specified therein. This declaration will be notified in the official gazette:

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

(5) 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 respective regions of the Union Territory of Pondicherry and shall also be served in such manner as the Government may think 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 to some conspicuous part of the offices of the village panchayats located in the said area; or

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

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

(6) If in the opinion of the Authority, the availability of the ground water has improved in a notified area based on satellite imageries or any report of the remote sensing applications in the country under the umbrella of National Natural Resources Management System or any other report published by the Government of India or other State Government or Union Territory, the Authority may advise the Government to de-notify such area and the Government may do so according to the procedure prescribed in this section for notifying the area.

6. Grant of permit to this extract and use ground water in the notified area.

(1) Any user of ground water [as defined under sub-section (g) of section 2] desiring to sink a well in the notified area for any purpose either on personal or community basis, shall apply to the Ground Water 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 Ground Water Authority:

Provided that the person or persons will not have to obtain a permit if the well is proposed to be fitted with a hand pump or water is proposed to be withdrawn by manual devices.

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

(3) On receipt of an application under sub-section (1) if the Ground Water Authority is satisfied that it shall not be against public interest to do so. It may grant, subject to such conditions and restrictions as may be specified, a permit authorizing the extraction and use of ground water:

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

(4) The decision regarding the grant or refusal of the permit shall be intimated by the Ground Water Authority to the applicant within a period of 30 days from the date of receipt of the application.

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

- (a) the purpose or purposes for which ground water is to be used ;
 - (b) the existence of other competitive users;
 - (c) the availability of ground water;
 - (d) quality of ground water with reference to use;
 - (e) spacing of ground water structures keeping in consideration the purpose for which ground water is to be used;
 - (f) long-term ground water level behavior;
 - (g) quantity of ground water utilized with reference to land use in the area; and
 - (h) any other factors relevant thereto.
- (6) The permit shall be in such form as may be prescribed.

7. Registration of existing users in notified Areas

(1) Every existing user of ground water in the notified area shall within a period of one hundred and twenty days from the date specified in the notification under sub-section (4) of section 5, apply to the Ground Water Authority for the grant of a certificate of registration . Recognizing its existing use in such form and in such manner as may be prescribed;

Provided that the Ground Water Authority may entertain any such application after the expiry of the said period of one hundred and twenty days, if it is satisfied that the user was prevented by sufficient cause from filing application in time.

(2) The details to be furnished in an application under sub-section (1) shall include the following, namely: ____

- (i) the description of the source of ground water, such as type of well, its exact location;
- (ii) the device used for lifting water;
- (iii) the quantity of ground water withdrawn and hours of operation per day;
- (iv) the total period of use in each year;
- (v) the purpose or purposes for which ground water is being extracted;
- (vi) in case of irrigation well, the location and extent of area irrigated;
- (vii) in the case of water supply schemes undertaken by the Government or other local authorities, the details of services involved in addition to the quantities of ground water extracted, the diversion or the pumping points and their locations; and
- (viii) in the case of industries, the details such as daily water requirement for various purposes, type of well structure, lifting device used, etc.

(3) On receipt of an application under sub-section (1), if the Ground Water Authority is satisfied that it shall not be against the public interest to do so, it may grant, subject to such conditions and restrictions as may be specified, a certificate of registration authorizing the continued use of groundwater;

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

(4) The decision regarding the grant or refusal of the certificate of registration shall be intimated by the Ground Water Authority to the applicant within a period of thirty days from the date of receipt of the application.

(5) In granting or refusing a certificate of registration under sub-section (3), the Ground Water Authority shall have regard to, ____

- (a) The purpose or purposes for which ground water is to be used;
- (b) The existence of other competitive users;
- (c) The availability of ground water;
- (d) Quality of ground water with reference to use;

- (e) Spacing of ground water structures keeping in consideration the purpose for which ground water is to be used;
 - (f) Long-term ground water level behaviour;
 - (g) quantity of ground water utilised with reference to land use in the area; and
 - (h) any other factors relevant thereto.
- (6) The certificate of registration shall be in such form as may be prescribed.
- (7) Pending the communication by the Ground Water Authority of the decision on an application under sub-section (1), every existing user of ground water in the notified area shall be entitled to the continued use of ground water in the same manner and to the same quantity as he was entitled prior to the date of his application.
- (8) If a registered well becomes defunct, this fact should be immediately brought to the notice of the Ground Water Authority by the user of groundwater.

8. Registration user of new wells in non-notified area

- (1) All wells sunk in the Union Territory of Pondicherry shall have to be registered including the areas not notified under section 5 of the Act;
- Provided that the person or persons who use the ground water drawn from a well by manual devices, e.g., hand pumps, rope and bucket, etc., shall be excluded.
- (2) The provisions of sub-section (8) of section 7 shall also be applicable in the case of wells sunk in non-notified areas.

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

At any time after a permit or certificate of registration, as the case may be has been granted, the Ground Water Authority may, for technical reasons, alter, amend or vary the terms of the permit or certificate of registration, as the case may be:

Provided that the user of ground water has been given an opportunity of being heard.

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

10. Prohibition of carrying on the business of sinking wells in a notified area.

No person, either by himself or by any other person acting on his behalf shall, after six months of the enforcement of the Act, carry on the work of sinking of wells or extraction of ground water or any other activity connected with the sinking of wells and/or extraction of ground water in any notified area, except in accordance with a license granted in this behalf.

11. Grant of licence for sinking of wells.

- (1) Any person desiring to carry on the business of sinking of wells and/or installation of devices for extraction of ground water in a notified area, may make an application to the Ground Water Authority for the purpose.
- (2) Every application under sub-section (1) shall be made in such form, shall contain such particulars and shall be accompanied by such fees as may be prescribed.
- (3) On receipt of an application under sub-section (1), the Ground Water Authority may, after such enquiry as it deems fit and after satisfying itself that the person concerned has the means and the knowledge to undertake sinking operations and/or extraction of ground water, grant a licence in such form as may be prescribed and subject to such conditions as may be specified therein.

12. Cancellation of permit, certificate of registration or licence

If the Ground Water Authority is satisfied either on a reference made to it in this behalf or otherwise, that,

(a) The permit or certificate of registration or the licence granted under sub-section (3) of section 6, or sub-section (3) of section 7, or sub-section (3) of section 11, as the case may be, has been obtained by fraud or misrepresentation of facts, or

(b) the holder of the permit or certificate of registration or licence has without reasonable cause failed to comply with the conditions subject to which the permit or certificate of registration or licence has been granted or has contravened any of the provisions of this Act or the rules made there under, or

(c) a situation has arisen which warrants limiting of the use of extraction of ground water, then, without prejudice to any other penalty to which the holder of the permit or the certificate of registration or licence may be liable under this Act, the Ground Water Authority may, after giving the holder of the permit, certificate of registration or licence, as the case may be, an opportunity to show-cause, cancel the permit, certificate of registration or licence.

13. Powers of the Ground Water Authority.

(1) The Ground Water Authority or any person authorized by writing in this behalf shall have power,

(a) to enter 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) to inspect the well which has been or is being sunk and the soils and other materials excavated there from;

(c) to take specimens of such soils or other materials or of water extracted from such wells;

(d) to inspect and to take copies of the relevant records or documents and ask any question necessary for obtaining any information (including diameter or depth of the well which is being or has been sunk, the level at which ground water was struck and subsequently restored or rested, the strata encountered in the sinking of the well and the quality of ground water struck) required for carrying out the purposes of this Act;

(e) to serve or cause to be served a notice requiring any user of ground water other than for agricultural use 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;

(f) to require the user of ground water other than for agricultural use to install water measuring device on any ground water supplies, when necessary, to properly administer the ground water or where there is reason to believe that the user does not comply with the provisions contained in this Act or for any other sufficient reason for defending the public interest;

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

(g) to seize any equipment/device utilized for illegal sinking and destroy the work executed fully or partly;

(h) to require any user of ground water, who does not comply with the provisions of this Act and rules framed there under, to close down any water supply or destroy any hydraulic work;

Provided that where the user of ground water does not comply with the requisition issued to him within a

Period of sixty days, the Ground Water Authority itself may carry out the necessary work and recover the cost from the illegal user of groundwater;

(i) to enter and search with such assistance, if any, as it considers necessary, any place in which it has reason to believe that offence under this Act has been or is being committed and order, in writing, the person, who has been or is committing the offence, not to extract or use the ground water for a specified period not exceeding thirty days; and

(j) to exercise such other powers as may be necessary for carrying out the purposes of this Act or any rules made there under.

(2) The power conferred by this section includes the power to break open the door of 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 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 1974 as they apply to any search or seizure made under the authority of a warrant issued under section 93 of the said code.

(4) Where the Ground Water Authority seizes any mechanical equipment/device under clause (g) of sub-section (1), it shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

14. Restriction on publication on information and returns

Any user of ground water may give notice in writing to the Ground Water Authority to treat as confidential, any specimen taken under clause (c) of sub-section (1) of section 13 or any other information or return furnished by him under clause (e) of sub-section (1) of the section and thereupon the Ground Water Authority shall not allow that specimen or other information or return, except in so far as it contains or affords information as to water resources and supplies and geological conditions, to be published or shown to any person (not being an officer of the Government), unless the person giving the notice consents thereto.

15. Service of orders etc.,

(1) Every order under clause (d) of sub-section (1) of section 13 and every notice under Orders, etc. clause (e) of sub-section (1) of that section shall be served,--

(a) by giving or tendering the order of notice or by sending it by post to the user for whom it is intended; or

(b) if such user cannot be found, by affixing the order of notice on some conspicuous part of his last known abode or place of business or by or tendering the order of notice to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the land or building in which the well is being sunk.

(2) Where the person on whom an order or a notice is to be served is a minor, service upon his guardian in the provided in sub-section (1) shall be deemed to be service upon the minor.

16. Delegation of powers

The Ground Water 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, in such circumstances and under such conditions, if any, as may be specified in its order, be exercised or discharged also by any employee of the Ground Water Authority as may be specified in this behalf in the order.

17. Members and employees of the Ground water Authority Central public Act 45 of 1980 All members and employees of the Ground Water Authority shall, when acting or purporting to act in pursuance or the provisions of this Act or of any rules made there under, be deemed to be public servants within the meaning of section 21 of the Indian penal code.

18. Protection against action taken in good faith .

No prosecution, suit or other legal proceeding shall be instituted against the Government or the Ground Water Authority or any other Officer of the Government or any member or other employees of the Ground Water Authority for anything done or intended to be done in good faith under this Act, or the rules made thereunder.

19. Cognizance and trial offences.

(1) No prosecution for an offence under of this Act shall be instituted except by or with the written consent of the Ground Water Authority or a person authorized in this behalf by the Ground Water Authority .

(2) No court inferior to that of a Judicial Magistrate of the First Class shall try any offence under this Act.

20. Offences and penalties.

(a) If any user having been required to furnish any information or return under clause (e) of sub-section (1) of section 13, --

(i) Willfully refuses or without lawful excuse, neglects to furnish such information or return, or

(ii) Willfully furnishes or causes to be furnished any information or return, which he knows to be false,

he shall be punishable,--

(i) for the first offence with fine, which may extend to five hundred rupees; and

(ii) for the second and subsequent offence, with fine which may extend to one thousand rupees;

(b) If any user, –

(i) Contravenes or fails to comply with any of the provisions of this Act or any rule made there under, or

(ii) obstructs the Ground Water Authority or any other person authorized by it to exercise any of the powers under this Act,

he shall be punishable,-

(i) for the first offence with fine which may extend to five thousand rupees, and

(ii) for the second and subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

21. Compounding of offences

Any offence under this Act as may be prescribed, may, before or after the institution of the proceedings, be compounded by the Ground Water Authority .

22. Offences by companies

(1) Wherever an offence under this Act has been committed by a company, every person who at the time, the offence is committed was in-charge of, or 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company with the consent or connivance of, or is attributable to any neglect on the part on 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;

Provided that nothing contained in this sub-section shall any such person liable to any punishment 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.

Explanation .- For the purpose of this section,-

(a) “Company” means any body corporate and included a firm or other association of individuals;and

(b) “Director” in relation to a firm, means a partner in the firm.

23. Appeals.

(1) Any person aggrieved by a decision or action of the Ground Water Authority under this Act may, within period of thirty days from the date on which the action is taken or the decision is communicated to him and payment of such fees as may be prescribed, prefer an appeal to such authority as may be specified by the Government in this behalf;

Provided that the appellate authority may entertain an appeal after expiry of the said period of thirty days, if it satisfied that the applicant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal within three months from the date of receipt of the appeal petition.

24. Bar of jurisdiction of civil courts

No civil court shall have jurisdiction in respect of any matter which the Government or the Ground Water Authority is empowered by this Act to determine and no injunction shall be granted by any court or any other authority in respect of any action taken or to be taken in pursuance of any powers conferred by or under this Act.

25. Power to make rules

(1) The Government may, by notification in the official gazette, 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 all or any of the following matters, namely: –

- (a) the term of office and manner of filling vacancies other conditions of service among the members and Chairman of the Ground Water Authority;
- (b) the functions and the terms and conditions service of the employees of the Ground Water Authority;
- (c) any other manner of effecting service of the notification under clause (c) of sub-section (5) of section 5;
- (d) the form of application under sub-section (2) of section 6 and sub-section (2) of section 11 and the particulars that may be furnished with these applications ;
- (e) the form of application under section 7;
- (f) fees to accompany the application for license under sub-section (2) of section 11 ;
- (g) the form of the permit and certificate of registration under sub-section (6) of section 6 and sub-section (6) of section 7 and the conditions/ restrictions that may be specified therein;
- (h) the form of licence under sub-section (3) of section 11 and the condition that may be specified therein;
- (i) the form in which and the interval at which the information or return under clause (e) of sub-section (1) of section 13 shall be furnished and the particulars with such information or return shall contain;
- (j) specifying the appellate authority under sub-section (1) of section 23 and the fees to accompany the application for appeal;
- (k) any other matter which is required to be or may be prescribed.

(3) Every rule made under this section shall be laid, soon may be after it is made, before the Legislative Assembly it is in session for a total period of fifteen days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in it is so laid or the sessions immediately following, or the successive sessions aforesaid, the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule thereafter shall have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification, or annulment shall be without prejudice to the validity of anything done earlier under that rule.