

**Case Note:** Case concerning the limitation being placed on the withdrawal of groundwater by a water bottling plant by the Groundwater Water Department Acting under the Kerala Municipality Act, 1954. The Court held that such a limitation could be validly imposed as it was being done in public interest.

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## **IN THE HIGH COURT OF KERALA**

Decided On: 14.03.2006

**John**

**v.**

**Kalamassery Municipality**

### **JUDGMENT**

**Thottathil B. Radhakrishnan, J.**

1. Petitioners own 9 cents of property in Edappally North Village. They have constructed a well in the said property on the basis of Exts. P1 and P2, approved plan and permit issued by the Municipality. According to the petitioners, they carry on business in the name and style "Aqua Line Fresh Water" and are extracting water from the said well and supplying the same to various institutions in the public and private sectors.

2. By Ext. P3, the petitioners are notified by the Municipality to stop drawing of water in excess of what is stated therein. Ext. P3 refers to a report of the Health Inspector and also Ext. R2(b) report of the Ground Water Department.

3. It appears that there were different complaints regarding the excessive drawing of water by the petitioners resulting in water scarcity in the area in question. The said complaints, which gained the attention of the District Collector, were forwarded by the Collector to the Ground Water Department along with covering letter dated 30.9.2004. Thereupon, as entrusted by the District Officer in the Ground Water Department, a competent officer conducted inspection and noticed various details which have been reported in Ext. R2(b). On the basis of the factors stated therein regarding the controlling of pumping of water from two wells which fell for consideration in the said report, the Ground Water Department suggested control of pumping by allowing pumping at the rate of 15000 litres per day during the months of October, November and December and without any such restriction from 15th June to 30th September, however stating that there should be no pumping of water for sale from 1st January to June 15. This means that the suggestion was that there shall be no drawing of water using pumps for commercial exploitation meaning thereby that the water could be used only for minimum requirement of any activity in the site. This is how the said regulation in Ext. R2(b) can be understood

Ext. R2(b) and Ext. R1(a) were forwarded to the District Collector and a copy of Ext. R1(a) to the Municipality. Following the said report, the Municipality issued the impugned Ext. P3 notice.

4. Apart from the Municipality and the Government supporting Ext. P3, local residents and the management of a school have filed impleading applications which have been allowed and they have been heard in support of the impugned notice.

5. It is first urged, in opposition to the Writ Petition, that under Section 509 of the Kerala Municipality Act, 1994 (hereinafter referred to as "the Act"), the impugned Ext. P3 is an appealable one. I am not inclined to treat the same as an alternative efficacious remedy particularly when arguments have been advanced touching the questions relating to jurisdiction and having regard to the urgency of the situation as well.

6. On the one hand, the petitioners contend that the activity, if prevented, would not only result in commercial loss to them, but would affect the supply of drinking water to various parts of Ernakulam District and that various institutions, including public offices in Ernakulam District are likely to run short of drinking water. It is further pointed out that the petitioners are being discriminated against while there are other persons carrying on similar activities.

7. Per contra is the assertion of the official respondents and the impleaded private parties, contending that the depletion of water sources has to be prevented.

8. The learned Counsel for the petitioners strenuously urged before me that the provisions contained in the Act, particularly Sections 413 and 416 thereof, do not authorise the Municipality or the Secretary to take action as has been done in Ext. P3. This contention is urged by attempting to point out that the said provisions are confined to those matters enumerated therein, which do not include preservation of ground water sources etc.

9. However, Section 30 of the Act provides for powers, functions and responsibilities of the Municipality which include the administration of a municipal area in respect of the matters enumerated in the First Schedule to the Act. Such power of administration of a municipal area by the Municipality includes the mandatory functions of conservation of traditional drinking water sources, preservation of ponds and other water tanks, maintenance of waterways and canals under the control of the Municipality, as well as Sector-wise distribution of functions, including carrying out conservation of water and implementation of ground water resources development as part of Minor Irrigation. Viewed in the said angle, it cannot be assumed that the Municipality is powerless to act in the situation, particularly when it had authority, when there is material before it in the form of Ext. R1(a), to act upon. Ext. R2(b) reflects consideration of relevant materials by a competent authority and there is no reason why such report ought not have been acted upon in public interest.

10. This takes to the next limb of contentions between the parties as to the applicability of Kerala Ground Water (Control and Regulation) Act, 2002 ("Ground Water Act", for

short). Section 9 of that Act provides for registration of user of ground water. Section 9 read with Section 2(1)(h) would show that any person using ground water for any purpose, including domestic purpose, from a pumping well thereby meaning, in terms of Section 2(1)(f), a well fitted with pump driven by an electric motor or oil engine for pumping water except those exempted under the said clause of Section 2(1), has to apply for being registered with the State Ground Water Authority. None has a case that the State Ground Water Authority has not been constituted. The petitioners admittedly do not have the registration under the Ground Water Act.

11. The learned Counsel for the petitioners submitted that the decision of this Court in *Hindustan Coca-Cola Beverages (P) Ltd. v. Perumatty Grama Panchayat* is in favour of the petitioners. I am afraid, not. What has been done as per the impugned Ext. P3 is only a permissible restriction in public interest.

12. The learned Counsel for the Municipality further pointed out that the petitioners had entered into an agreement with the Municipality whereby they had agreed to abide by the conditions regarding pumping of water. I have gone through the said agreement which is in the files of the Municipality. The same is inscribed on a stamp paper issued on 13.12.2002. I noticed that date only because the document does not bear a date. Having gone through the said document, I refrain from placing any interpretation of the said document since that is unnecessary for a final decision of this case.

13. The larger public interest involved in the matter is explicit in the report of the Ground Water Department which is Ext. R2(b). Having found that the impugned decision does not lack jurisdiction, contrasting the private interest of the petitioners with the larger public interest as reflected in the said report Ext. R2(b), without forgetting the plea of the petitioners that they are supplying drinking water to the public in Ernakulam, I do not find any ground to grant any relief to the petitioners in exercise of writ jurisdiction under Article 226 of the Constitution of India.

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