

ACT 19 OF 2002

THE KERALA GROUND WATER (CONTROL AND REGULATION) ACT, 2002 [1]

AN ACT to provide for the conservation of ground water and for the regulation and control of its extraction and use in the State of Kerala.

Preamble:--WHEREAS it is expedient to provide for the conservation of Ground Water and for the regulation and control of its extraction and use in the State of Kerala;

AND WHEREAS in certain areas of the State the tendency of indiscriminate extraction of Ground Water is continuing;

AND WHEREAS it is felt that the erratic extraction of ground water is found to result in undesired environmental problems in such areas:

AND WHEREAS the ground water is a critical resource of the State;

AND WHEREAS it is considered necessary in the public interest to regulate and control any form of development of ground water in the State of Kerala;

BE it enacted in the Fifty-third Year of the Republic of India as follows: -

1. Short title, extent and commencement.--(1) This Act may be called the Kerala Ground Water (Control and Regulation) Act, 2002.

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

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint:

Provided that different dates may be appointed for different areas and for different provision of the Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of such provision.

2. Definitions .--(1) In the Act, unless the context otherwise requires,--

(a) "Authority" means "the State Ground Water Authority" constituted under sub section (1) of section 3 of this Act;

(b) "Government" means the Government of Kerala;

(c) "Ground Water" means the water which exist below the surface of the ground at any location or at any particular category of locations;

(d) "notified area" means the area notified under sub section (1) of section 6 of this Act;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "pumping well" means a well fitted with pump driven by an electric motor or oil engine for pumping water but does not include open wells fitted with pumps driven by engine or motor of Horse Power upto 1.5 and tube wells, borewells and dug-cum borewells fitted with pumps driven by engine or motor of Horse Power upto 3;

(g) "digging" with all its grammatical variations and synonyms, includes digging or drilling of new wells, putting in pipes or drilling, making tunnels or increasing depth or diameter of the existing wells;

(h) "user of ground water" means any person using ground water from a pumping well for any purpose including domestic purpose;

(i) "well" means any structure made on the surface of earth by any person other than officers authorised by State Government or Central Government, for the purpose of drawing ground water for search, development, use or management of ground water resources and includes open well, dug well, borewell, dug-cum borewell, tube well; storage well, infiltration gallery, but shall not include open well or dug well used for domestic purposes.

3. State Ground Water Authority.--(1) The Government shall, by notification in the Gazette, constitute an authority called the State Ground Water Authority with effect from such date as, may be specified therein,

(2) The authority shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable and to enter into contract and shall by the name of the Authority sue and be sued.

(3) The Authority shall consist of the following members, namely:--

(i) the Secretary to Government, Water Resources Department;

Ex-officio, who shall be the Chairman of the Authority;

(ii) the Secretary to Government, Finance Department; Ex-officio;

(iii) the Secretary to Government, Local Self Government (Rural Government)

Department; Ex-officio;

(iv) the Director, Ground Water Department; Ex-officio, who shall be the Secretary of the Authority;

(v) the following persons nominated by the Government

(a) two members of the Legislative Assembly;

(b) an expert in Water Resources;

(c) a member of Grama Panchayat;

(d) a member of Municipal Council ;

(e) a member belonging to a Scheduled Caste or Scheduled Tribe;

(f) a Woman;

(g) a public man;

(h) an environmental activist.

(4) The term of office of the nominated members shall be three years.

(5) Any nominated member may resign his office at any time by a resignation letter addressed to the Government:

Provided that the resignation shall not come into effect until it is accepted,

(6) The conditions of the service of the members of the Authority shall be, such as may be prescribed.

4. Acts not to be invalidated by irregularity, vacancy etc.--No act done or proceedings taken by the authority shall be invalidated merely on the following reasons --

(a) any vacancy or any defect in the constitution of the authority; or

(b) any defect or irregularity in the appointment of a person acting as a member of the authority.

5. Officers and staff of the Authority.--All officers and other employees of the Ground Water Department shall, for the purposes of this Act, be considered as the officers and staff of the Authority and they shall exercise the powers and perform the duties assigned to them from time to time by the Authority in writing:

Provided that the Government may depute such number of scientists and technicians, as it may deem necessary for the purpose of the proper functioning of the Authority under this Act or for the proper exercise of the powers under this Act.

6. Notifying areas for the control and regulation of ground water development.--(1) The Government may, if satisfied on the recommendation of the authority, that it is necessary in the public interest to regulate the extraction or use of ground water of any area, declare by notification in the Gazette, such area as notified area for the purpose of this Act, with effect from such date as may be specified therein.

(2) Every notification issued under sub-section (1) shall be published in the Gazette as well as in two daily newspapers having wide circulation in the said areas and a copy of the same shall be exhibited on the notice board of the office of the Grama Panchayat or Municipality, as the case may be and Village Office of the said area.

(3) The Government may, if satisfied on the recommendation of the Authority, that the availability of Ground Water has increased in any notified area, cancel the notification issued in respect of such area

7. Grant of permit to extract and use ground water.--(1) Any person desiring to dig a well or to convert the existing well into a pumping well, for his own or social purpose in the notified area, shall submit an application before the Authority for the grant of a permit for the purpose and shall not proceed with any activity connected with such digging or conversion unless a permit has been granted by the Authority.

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

(3) The Authority shall acknowledge the receipt of every application in the manner as may be prescribed.

(4) On receipt of an application under sub-section (1) the Authority shall, if satisfied that it shall not be against the public interest so to do, grant, subject to such conditions as may be prescribed a permit authorising to draw ground water or reject the application:

Provided that no person shall be refused a permit without giving an opportunity of being heard.

(5) The decision regarding the grant or refusal of the permit shall be communicated to the applicant by the Authority in writing within ninety days from the date of receipt of the application.

(6) Where the Authority received the application under sub-section (1) fails to inform the applicant of its decision on the application within ninety days from the date of receipt of the application, the permit shall be deemed to have been granted to the applicant and such person shall for the purpose of this Act be deemed to be a permit holder.

(7) In granting or refusing the permit, the Authority shall consider the following matters, namely:--

- (a) the purpose or purposes for which the water is used;
- (b) the other existing users of that locality;
- (c) the availability of ground water of that area;
- (d) the quality of ground water in connection with its use;
- (e) the distance of the proposed well with the adjoining well and the number of wells in the area and the chance of interference with existing wells;
- (f) chances of ground water pollution;
- (g) the long term nature of ground water level in the area;
- (h) any other factor relevant thereto.

8. Registration of the existing wells of the notified area.--(1) Every owner of the existing wells of the notified area in the State shall, within a period of one hundred and twenty days from the date of constitution of the Authority, register the wells existing and in use and shall apply to the Authority in such form and in such manner as may be prescribed for a certificate of registration:

Provided that if the Authority is satisfied that there are sufficient reasons for the applicant for not submitting the application within the said time limit it may entertain the application submitted thereafter.

(2) The details to be furnished in an application under sub-section (1) shall contain such particulars and shall be in such manner as may be prescribed.

(3) On receipt of an application under sub-section (1) the Authority shall, if satisfied that it shall not be against the public interest so to do, register the well subject to such conditions and restrictions as may be prescribed and issue a certificate of registration to the applicant or reject the application:

Provided that no application for registration shall be rejected without giving the applicant an opportunity of being heard.

(4) The decision regarding the grant or refusal of certificate of registration shall be communicated to the applicant by the Authority within ninety days from the date of receipt of the application.

(5) The Authority shall consider the following matters before granting or rejecting the application for registration of well under sub-section (3), namely:--

- (a) the purpose for which water is used;
- (b) the other existing users of that locality;
- (c) the rate of re-charge of the area of influence of the well;
- (d) the quality of ground water in the location;
- (e) the long term nature of water level of well;
- (f) the other relevant factors.

(6) The Certificate of Registration shall be in the form prescribed.

(7) Until the Authority intimates the decision regarding grant or rejection of registration under sub-section (1), every owner of existing well in the notified area shall be entitled to the continued use of ground water in the same manner as before the date of application.

(8) In case a registered well becomes unuseful, the owner shall inform the matter in writing to the Authority immediately.

9. Registration of user of Ground Water.--(1) All users of ground water in the State shall within one hundred and twenty days from the date of constitution of the Authority, apply to be registered with the Authority as a user of ground water in the State and for grant of certificate of registration.

(2) On receipt of an application under sub-section (1) the Authority shall, if satisfied that it shall not be against public interest so to do, grant registration subject to the conditions and restrictions as may be prescribed, and issue a certificate of registration or reject the application:

Provided that no application for registration shall be rejected without giving the applicant an opportunity of being heard.

10. Protection of public drinking water sources.--(1) Notwithstanding anything contained in this Act, no person shall without the permission of the Authority dig well for any purpose within thirty meters from any drinking water source from where water is pumped for public purpose:

Provided that the provisions in sub-section (1) shall not apply to the digging of a well for any drinking water scheme implemented by the Government or local bodies.

(2) Every application for permission under sub-section (1) shall be in such form as may be prescribed and shall be submitted to the Authority with such fees as may be fixed.

(3) On receipt of an application under sub-section (2) and if it is satisfied that digging of well shall not adversely affect the public drinking water source, permission may, subject to such restrictions and conditions mentioned therein, be granted to dig the well for the purpose of drinking water or for agriculture:

Provided that if the decision of the Authority is not communicated to the applicant within ninety days from the date of application permission shall be deemed to have been granted and the permission so deemed to have been granted shall be subject to the laws in this regard.

11. Power to make changes to the conditions in the permit or certificate of registration.--At any time after any permit or certificate of registration has been granted, the authority may, after giving the owner an opportunity of being heard, make change, amend or modify the conditions, in the permit or certificate of registration, as the case may be, on technical reasons:

Provided that before taking such action, the Authority shall ensure that no standing crops are damaged by this decision.

12. Cancellation of permit or certificate of registration.--The Authority may, if satisfied on receipt of any information or on the basis of its own studies, that,-

(a) the permit or certificate of registration under this Act is not based on facts;

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

(c) a situation has arisen which warrants limiting of the use of extraction of ground water in the area around the well;

without prejudice to any other penalty to which the holder of the permit or certificate of registration may be subjected to under this Act, and after giving the holder of permit or certificate of registration an opportunity of being heard cancel the permit or certificate of registration.

13. Grants from State Government.--The Government shall, after due appropriation made by the State Legislature by law in this behalf, provide to the Ground Water Authority by way of grants such sum of money as it may consider necessary for carrying out the purposes of this Act.

14. Fund of the Ground Water Authority.- The Authority shall have a Fund to be called the Ground Water Authority Fund and,--

(a) all sums of money received by the Authority by way of grant, loan or otherwise from the Central or State Governments or from Financial Institutions;

(b) all other sums of money received by, or on behalf of, the Authority; shall be credited to it.

(2) The Ground Water Authority Fund shall be utilized for meeting the expense of the activities of the Authority.

15. Power of Ground Water Authority.--(1) The Authority shall have power;--

(a) to enter any property and to measure the quantity of water located on the surface of earth or under the earth;

(b) to inspect any well which is dug or being dug and the soil and other materials excavated therefrom;

(c) to take samples of such soil or other materials or water extracted on such wells;

(d) to require, by order in writing the persons digging a well to keep and preserve in such manner as may be prescribed, the samples of soil or materials extracted from there as directed by the Authority for a period not exceeding three months from the date of completion or abandonment of the work;

(e) to examine and take copies of the relevant records or documents and for obtaining any information required for the implementation of the objects of this Act, to ask any question on matters including the diameter or depth of the well which is dug or being dug, the level at which the water was found out or may be found out and subsequently restored or rested, the types of strata encountered in the digging of well and the quality of water found out;

(f) to require the user of ground water to install water measuring instrument in any water supply machinery. When it is necessary, for the proper use of water or there is reason to believe that the user is not complying the provisions contained in this Act or to protect the public interest;

(g) to seize the equipments and instruments used for unauthorised digging and to destroy partially or completely the work done;

(h) to require any user of ground water who does not comply with the provisions of this Act and the rules made thereunder, to stop any water supply or to destroy any hydraulic work which is found unauthorised as per the provisions of this Act and the rules made thereunder;-

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

(j) to take necessary steps to prevent the installation of drainage pipes etc. affecting the water sources and to prevent depositing of waste materials in the surface water sources if it is likely to affect the ground water sources;

(k) to exercise such other powers that may be necessary for the implementation of the objects of this Act or the rules made thereunder,

(2) The Authority shall perform such functions as may be assigned by the Government from time to time in accordance with the objectives of this Act.

(3) In case, where any user of ground water makes any default in doing any act as required by the authority in exercise of the powers under sub-section (1), the authority shall have power to perform such act directly and to realise the expense incurred in that behalf from that person in such manner as may be prescribed.

(4) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall, as far as possible, apply to any search held or seizure made under this Act.

(5) Where the authority seizes any machinery or instruments under clause (g) of sub-section (1), it shall as soon as may be within ten days report to a magistrate and take his order for the custody of the same.

16. Implementation of orders, etc.--Every order under section 1 shall be furnished to the user in such manner as may be prescribed.

17. Delegation of powers and duties.--The Authority may, by general or special order in writing, direct that all or any of the powers and duties to be exercised or performed by it shall be

exercised or performed by such employee of the Authority under such circumstances and on such conditions as may be specified therein.

18. Members and employees of Ground Water Authority to be public servants.--All members and employees of the Authority while acting or purporting to act under the provisions of this Act or any rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860);

19. Protection of action taken in good faith.--No suit, prosecution or other legal proceedings shall lie against the Government or Authority or any officer of the Government or any member or other employee of the Authority for anything which is in good faith done or purported to be done under or in pursuance of this Act or the rules made thereunder.

20. Cognizance of offences and Trial.--No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence submitted with the prior permission of the Secretary of the Authority.

21. Penalties.--(1) If any owner or user of a well contravenes any of the provisions of this Act or Rules made thereunder or fails to comply with the rules, in furnishing any information in the manner prescribed, he shall be punishable,--

- (i) with fine which may extend to five hundred rupees for the first offence; and,
- (ii) with fine which may extend to one thousand rupees for the second and subsequent offences.

(2) If for the unauthorised digging or construction or use of wells any user of ground water or the owner of a well,--

(a) contravenes any of the provisions of this Act or the rules made thereunder or fails to comply with the same; or

(b) obstructs the Authority or any other person authorised by it in exercising any of the powers under this Act, he shall be punishable,--

- (i) with fine which may extend to two thousand rupees for first offence; and
- (ii) with imprisonment upto six months or a fine which may extend to ten thousand rupees for the second or subsequent offences.

22. Compounding of offences.--The Authority may in such manner as may be prescribed, compound any offence, under this Act which is liable to be punished with a fine not exceeding two thousand rupees.

23. Offences by Companies.--If an offence punishable under this Act is committed at any time by a company every person who is in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence and the company shall be deemed to be responsible for the offence and shall be liable to be proceeded against and punished accordingly:

Provided that where any offence under this Act has been committed by a company and it is proved that the commission of the offence is with the consent and connivance or attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company such Director, Manager, Secretary or other officers shall be deemed to be responsible for that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purpose of this section,-

(a) 'Company' means any body corporate and includes a firm or other association or individuals; and

(b) 'Director' in relation to a firm means the partner in the firm.

24. Appeals.--(1) Any person aggrieved by the decision or action of the Authority under this Act may, within thirty days from the date on which such action is taken or the date of communication of that decision to him, and remitting such fees as may be determined, prefer an appeal to such Authority as may be prescribed:

Provided that the Appellate Authority may, entertain an appeal preferred after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not filling the appeal in time.

(2) On receipt of an appeal under sub-section (1) the Appellate Authority shall dispose of the appeal as early as possible after giving the appellant a reasonable opportunity of being heard.

25. Accounts and Audit.-- (1) The Authority shall maintain true and proper accounts and other relevant records and prepare an annual statement and a balance sheet containing accounts of income and expenditure in such form and in such manner as may be prescribed.

(2) The accounts of the Authority shall be inspected and audited in accordance with the provisions of the Kerala Local Fund Audit Act, 1994 (14 of 1994).

(3) The accounts of the Authority as audited and certified together with the audit report thereon shall be forwarded annually to the Government and the Government shall, as early as possible cause the same to be laid before the Legislative Assembly.

26. Removal of difficulties.-- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government, may by order, do anything not inconsistent with the provisions of this Act, which appear to be necessary for the purpose of removing the difficulty;

Provided that Government shall not issue any order under this sub-section after the expiry of two years from the date of commencement of this Act.

(2) Every order issued under sub-section (1) shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly make any modification in the order or decides that the order should not be issued, the order shall thereafter 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 previously done under that order.

27. Power to make rules.-- (1) The Government may, by notification in the Gazette, make rules to carry out the provisions of this Act.

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

(a) service conditions of the members of the Authority;

(b) procedure for convening meetings of the Authority and other matter ancillary thereto;

- (c) powers and functions of the Secretary of the Authority;
- (d) duties and service conditions of the staff of the Authority;
- (e) any other manner of issuing notification under sub-section (3) of section 6;
- (f) format of application form, permit and the certificate of registration under various sections of this Act;
- (g) mode of keeping and maintaining samples of soil and other materials as per clause (d) of sub-section (1) of section 15;--
- (h) for specifying the Appellate Authority and the fee payable along with the appeal memorandum under sub-section (1) of section 24;
- (i) any other matter which is required to be, or may be prescribed,

(3) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly, while it is in session, for a total period of fifteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides 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 such modification or annulment shall be without prejudice to the validity of anything previously done under that rule