

Constitutional Writ

**Present:**

**The Hon'ble Mr Justice Jayanta Kumar Biswas**

Judgment on 26.08.2010

W.P.No.2264 (W) of 2010

**Monija Bibi & Anr.**

**-vs-**

**The West Bengal State Electricity Distribution Company Ltd. & Ors.**

Points:

Submersible Pump: Running submersible pump for extracting ground water without permission of authority under the West Bengal Ground Water Resources (Management, Control and Regulation) Act and Rules whether permissible-West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005-S.7,16 - West Bengal Ground Water Resources (Management, Control and Regulation) Rules, 2006-R 11

Facts:

Writ petitioners alleged that the respondents are not entitled to give electric connection to the submersible pump of the respondent nos. 6 to 9 which has been installed within 200 mts. from the submersible pumps of the petitioners. Respondents are not entitled to extract ground water sinking any well without obtaining permit or certificate of registration authorizing them to extract or use ground water in terms of provisions of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 and the Rules made thereunder.

Held:

A user sinking a well for extracting or using ground water in any district of the State without obtaining a permit under s.7, and a user who had sunk a well for extracting or using ground water in any district before the date of coming into force of the Act continuing to extract or use ground water without making an application within six months from August 1,

2006 to the District Level Authority concerned for a certificate of registration – both are liable to be prosecuted under s.16 of the Act.

Para 11

There cannot be any question of asking the Distribution Company to give supply of electricity in the discharging of its statutory obligation under s.43 of the Electricity Act, 2003 to anyone for operating an illegal well or pump for extraction or use of ground water. The licensee is to supply electricity only to such a user who has been authorized by the Authority either by issuing a permit or a certificate of registration to extract or use ground water.

Para 12

Both the petitioners and the private respondents are claiming right to extract and use ground water from their respective wells sunk in areas located in the district Murshidabad, and hence the Distribution Company will be required to give them supply of electricity only if they want to use it for working their lawfully installed submersible pumps for extraction or use of ground water. They cannot be permitted to use electricity for operating any pump installed in any illegally sunk well.

The petitioners and the private respondents will be entitled to operate their pumps only if the District Level Authority has issued permit or certificate of registration, as the case may be, authorizing them the extraction or use of ground water. If anyone is operating any pump installed in any illegally sunk well, then the licensee shall disconnect supply to the pump at once. Para 14

Mr. P.K.Chattjerjee and Mr. A.S.Chatterjee, advocates, for the petitioners.  
Mr. Subrata Biswas, advocate, for WBSEDCL. Mr. P. Ghosh, advocate,  
for the private respondents.

**The Court:** The petitioners in this art. 226 petition dated February 3, 2009 are seeking the following principal reliefs:

“a(i) Writ in the nature of Mandamus commanding the respondents not to give and/or effect electric connection to the submersible pump of the respondent nos. 6 to 9 which has been installed within 200 mts. from the submersible pumps of the petitioners.

(ii) writ in the nature of Mandamus commanding the respondents to enquire into the matter as to how the respondent nos. 6 to 9 can get registration certificate and installed the submersible pump within 200 mts. from the existing submersible pump of the petitioners and how the respondent no.5 is going to give electric connection to the submersible pump of the respondent nos. 6 to 9 and take steps for such illegal activities.”

2. Counsel for the petitioners submits that the private respondents are not entitled to extract ground water sinking any well without obtaining permit or certificate of registration authorizing them to extract or use ground water in terms of provisions of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 and the Rules made thereunder. His further submission is that, in any case, the private respondents cannot operate any well sunk within 200 metres from the well sunk by the petitioners.

3. Counsel for the private respondents disputes the correctness of the allegation that the private respondents have sunk any well within 200 metres from any well sunk by the petitioners, or that the private respondents have been operating any pump for extracting ground water without obtaining permit or certificate of registration authorizing them to extract or use ground water in the terms provisions of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 and the Rules made thereunder.

4. Counsel for the West Bengal State Electricity Distribution Company Limited, a licensee under the Electricity Act, 2003, submits that the question of giving supply of electricity to the petitioners and the

private respondents for working any pump installed in any well already sunk or to be sunk for extracting ground water can arise only if the appropriate authority under the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 issues to the persons concerned permit or certificate of registration, as the case may be, authorizing them to extract or use ground water.

5. After hearing counsel for the parties, I am of the view that it is not necessary to keep this petition pending for ascertaining whether the private respondents have been operating any pump installed in any well sunk by them for extracting or using ground water without obtaining any permit or certificate of registration authorizing them to extract or use ground water in terms of provisions of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005. In my opinion, for the following reasons the petition should be disposed of at the admission stage itself.

6. The West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 was enacted with a view to managing, controlling and regulating indiscriminate extraction of ground water in West Bengal and to provide for matters connected therewith or incidental thereto. It is evident that the legislation has been enacted keeping in mind the public trust doctrine for regulating use of one of the most valuable natural resources: ground water. Accordingly, stringent provisions have been made in the Act.

7. By s.3 of the Act the Government has been empowered to establish a State Level Authority and by s.4 it has been empowered to establish District Level Authorities for enabling the State Level Authority to perform its function and exercise its power under the Act efficiently.

8. Section 7 provides that on and from the date of coming into force of the Act, no user shall sink a well for extracting ground water without obtaining permit issued by the Authority concerned. Section 8 provides that any user who has sunk a well for extracting or using ground water in an area before the date of coming into force of the Act shall make an application, within such period, in such Form and in such manner, as may be prescribed, to the Authority of such area for a certificate of registration authorizing such user the extraction or use of ground water.

9. Rule 11 of the West Bengal Ground Water Resources (Management, Control and Regulation) Rules, 2006 provides that any user, who has sunk a well for extracting or using ground water in any area before the date of coming into force of the Act, shall make, in Form 6 an application referred to any sub-s.(1) of s.8 within a period of six months from the date of coming into force of the Rules, to the authorized officer. The Rules came into force on August 1, 2006 in terms of the provisions of r.1(2) thereof.

10. Section 16 of the Act provides as follows:

**“16. Offences and penalties.**– If any person, in the matter of sinking, or construction, or use, of any well, –

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

(b) obstructs the State Level Authority, or the District Level Authority or the Corporation Level Authority, or any person authorized by the State Level Authority, he shall be punishable, –

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

(ii) for the second or subsequent offence, with fine which may extend to ten thousand rupees.”

11. It is, therefore, evident that a user sinking a well for extracting or using ground water in any district of the State without obtaining a permit under s.7, and a user who had sunk a well for extracting or using ground water in any district before the date of coming into force of the

Act continuing to extract or use ground water without making an application within six months from August 1, 2006 to the District Level Authority concerned for a certificate of registration – both are liable to be prosecuted under s.16 of the Act.

12. Under the circumstances, there cannot be any question of asking the Distribution Company to give supply of electricity in the discharging of its statutory obligation under s.43 of the Electricity Act, 2003 to anyone for operating an illegal well or pump for extraction or use of ground water. The licensee is to supply electricity only to such a user who has been authorized by the Authority either by issuing a permit or a certificate of registration to extract or use ground water.

13. In this case both the petitioners and the private respondents are claiming right to extract and use ground water from their respective wells sunk in areas located in the district Murshidabad, and hence the Distribution Company will be required to give them supply of electricity only if they want to use it for working their lawfully installed submersible pumps for extraction or use of ground water. They cannot be permitted to use electricity for operating any pump installed in any illegally sunk well.

14. For these reasons, I dispose of the petition ordering as follows. The petitioners and the private respondents will be entitled to operate their pumps only if the District Level Authority has issued permit or certificate of registration, as the case may be, authorizing them the extraction or use of ground water. If anyone is operating any pump installed in any illegally sunk well, then the licensee shall disconnect supply to the pump at once. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)

