

DELHI WATER BOARD (AMENDMENT) BILL, 2002

STATEMENT OF OBJECTS AND REASONS

The importance of groundwater for the existence of human society cannot be overemphasised. Groundwater is the major resource of drinking water in both urban and rural India. Groundwater crisis is not the result of natural factors; it is caused by human actions. Day by day the water level in the country has been falling rapidly due to indiscriminate increase in extraction of groundwater.

The National Water Policy (1987) states that water is prime natural resource, basic human need, the precious national asset. It gives special attention to drinking water over other uses of water. The policy calls for controls on the exploitation of groundwater through regulation and integrated and coordinated development of surface and groundwater.

With this objective in view, the Central Ministry of Water Resources has drafted a Model Bill to regulate and control the development of groundwater and had circulated it to the States and Union Territories for enacting a suitable legislation on the said lines since the groundwater is the State subject.

The Delhi Water Board has been established under section 3 of the Delhi Water Board Act, 1998 (Delhi Act No.4 of 1998) to discharge the functions of water supply, sewerage and sewage disposal and drainage within the National Capital Territory of Delhi and for matters connected therewith.

Section 9(1) of the Delhi Water Board Act, 1998, provides for the functions of the Board. Clause (b) of that section provides that one of the functions of the Board shall be to plan for, regulate and manage the exploration of ground water in Delhi in consultation with Central Groundwater Authority. It also speaks of the Board's role of advising the Delhi Municipal Corporation and Delhi Cantonment Board or another local authority in respect of exploration of groundwater. Clause (b) puts an embargo on *Board's power to licence and levy user charges for the exploration of groundwater* in any area falling within the jurisdiction of the New Delhi Municipal Corporation or any other local authority, except with the authority of the Central Government.

Conversely, this lays down that the Board has inherent power to licence and levy charges for exploration of groundwater in Delhi excluding the areas which come under the jurisdiction of three local authorities, namely, NDMC, DCB and DDA.

Reading section 9 (1)(b) with section 55 of the Delhi Water Board Act, the Board even today has power to licence and levy charges for exploration of groundwater. The existing provisions of the Act therefore empower the Board to initiate steps for licensing of and levy charges therefore *at least for exploration and management of groundwater*.

Model Bill circulated by the Union Ministry of Water Resources has *underlined the broader issue of regulation and control of development of the groundwater in the country*. The Model Bill provides for an independent regime for this purpose obviously looking to the geographical size of the States and multiple problems of regulation and development of groundwater in urban and rural areas of these States. Fortunately for Delhi this problem more or less restricted to urban area with rural pockets. For this, as explained above, there is already a provision in the Delhi Water Board Act authorising the Delhi Water Board to advise the other local authorities in consultation with the Central Government. (Vide proviso to section 9(1)(b)).

It is, therefore, thought appropriate that necessary powers are given to the Board by amending the existing Act, instead of going in for a new regime as the Delhi Water Board is a statutory body already having required technical know how for handling matters relating to regulation and control of development of groundwater.

The Bill accordingly, provides for the Amendment of the Delhi Board Act, 1998 as explained below.

- (a) Amendment of long title:** - Long title of the Act requires amendment to expand the scope of the Act for empowering Delhi Water Board (DJB) to regulate, control and develop; the groundwater supply in Delhi. This is as per the mandate of the Model Bill circulated by the Ministry of Water Resources.
- (b) Definitions** - Certain new 'definitions such as 'groundwater', 'sink', 'user of groundwater' and 'well' will have to be inserted in the Act.
- (c) Amendment of Section 9** - It is proposed to amend section 9(1)(b) to enlarge the scope of present provision to include therein the regulation, control and development of groundwater as per the Model Bill. The clause now provides "Planning for regulation, control and development of groundwater" as one of the functions of the Board instead of only exploration and management of groundwater.
- (d) Insertion of new Chapter** - A new Chapter III-A has been inserted in the Act, which provides for regulation, control and development of groundwater in Delhi. New section 35-A provides for declaration of notified areas for the regulation, control and development of groundwater. Sections 35-B and Section 35-C, respectively, provide for permission for sinking any well for use of groundwater and for registration of existing users in areas notified. In granting or refusing permission for new well or registration of existing one the Board shall have regard to:

- (i) the purpose or purposes for which water is to be used;

- (ii) the existence of other competitive users;
- (iii) the availability of water;
- (iv) quality of groundwater with reference to use;
- (v) spacing of groundwater structures keeping in consideration the purpose for which water is to be used;
- (vi) long term groundwater level behaviour;
- (vii) any other factor relevant thereto.

Subsequent sections 35-D, 35-E and 35-F provide for powers to the Board for alteration, amendment and varying the terms of permit and registration and their cancellation Section 35-F in particular provides for entry, search, closing of water supply concerned and sealing of the water supply if situation so demands.

(e) Levy of user charges for use of groundwater - As explained in the beginning reading section 9(1)(b) and section 35 of the Act, the Board can levy user charges for use of groundwater. But a new section 35-H has been added **specifically** providing for levy of user charges by the Board to clarify the position beyond doubt.

(f) New offences have been added in the Fourth Schedule to the Act for effective implementation of the new provisions. The tenors of punishment have obviously been kept in tune with the existing penal provisions.

Bill No. 1 of 2002

THE DELHI WATER BOARD (AMENDMENT) BILL, 2002

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BILL

To amend the Delhi Water Board Act, 1998

BE it enacted by the Legislative assembly of the National Capital Territory of Delhi in the Fifty-second Year of the Republic of India as follows:-

Short title, extent and Commencement (1) This Act may be called the Delhi Water Board (Amendment) Act, 2002

(2) It shall extend to the entire area of the National Capital territory of Delhi excluding area under New Delhi Municipal Council and Cantonment Area.

(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 provisions of this Act and any reference in any such provisions to the

commencement of this Act shall be construed as a reference to the coming into force of that provision..

Amendment of
Long title
Delhi Act of 1998

2. In the long title to the Delhi Water Board Act, 1998 (hereinafter referred to as the principal Act), after the words “water supply,” the words “regularisation, control and development of groundwater,” shall be inserted.

Amendment of
Section 2

3. In section 2 of the principal Act.

(a) after clause (O) the following clause shall be inserted, namely:-

“(oo) ‘ground water’ means the water which exists below the surface of the ground at any particular location;”;

(b) after clause (aj), the following clauses shall be inserted, namely:-

“(ajj) ‘sink’ with all its grammatical variations and cognate expression in relation to a well include any digging, drilling or boring of a new well or deepening carried to the existing well;

(ajk) ‘specified’ means specified by regulations framed by the Board under section 109,”

© after clause (an) the following clause shall be inserted, namely:-

“(ann) ‘well’ means a well sunk for search or extraction of ground water by person or persons except by the authorised officials of the State or Central Government for carrying out scientific investigations, explorations, development or management work for the survey and assessment of ground water for irrigation and includes open 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 such as hand pump or rope and bucket.”

Amendment of
clause
Section 9

4. In section 9 of the principal Act, in sub-section (1), for

(b), the following clause shall be substituted, namely:-

“plan for, regulate, control and development of ground water in Delhi and also give advice in this respect to the New Delhi Municipal Council and Delhi Cantonment Board:

Provided that the Board shall not licence and levy user charges for regulation, control and development of ground water in any area for the time being falling within the jurisdiction of the New Delhi Municipal Council and Delhi cantonment Board, except with the prior approval of the Central Government”.

5. In the principal Act, after Chapter III, the following Chapter shall be inserted, namely:-

**“CHAPTER III-A
REGULATION, CONTROL AND DEVELOPMENT OF
GROUND WATER**

Power to notify area
For regulation and
Control of ground
water

35-A (1) If the Board is of the opinion that it is necessary or expedient in the public interest to control and regulate the extraction or the use of ground water in any form in any area, it shall by notification in the Official Gazette, declare any such area to be a notified area for the purposes of this Chapter with effect from such date as may be specified therein:

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

(2) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily region language newspaper having wide circulation, and also in such other manner laid down in sub-section (2).

Permission for use
Of ground water
in notified area

35-B (1) Any user of groundwater desiring to sink a well in notified area for any purpose shall apply to the Board 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 Board.

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

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

(3) On receipt of an application under sub-section (1), if the Board is satisfied that it will not be against public interest to do so, it may grant, subject to such conditions and restrictions as may be specified, a permit authorising the extraction and use of the 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 Board to the applicant within a period of thirty days, 60 days from the receipt of the application.

(5) In granting or refusing a permit under sub-section (3), the Board shall have regard to:

- (a) the purpose or purposes for which water is to be used;
- (b) the existence of other competitive users;
- (c) the availability of water;
- (d) quality of ground water with reference to use;
- (e) spacing of groundwater structures keeping in consideration the purpose for which water is to be used;
- (f) long term ground water level behaviour;
- (g) any other factor relevant there.

(6) The permit shall be in such form as may be specified.

Registration of existing
Users in notified areas

35-C (1) Every existing user of groundwater in notified area shall, within a period of thirty days from the date of notification of notified area under section 35-A will apply to the Board for the grant of a certificate of registration

recognising its existing use in such form and in such manner as may be specified:

Provided that the Board may entertain any such application after the expiry of the said period of thirty days, if it is satisfied that the user was prevented by sufficient cause from filing of application in time.

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

- (i) the description of the source of water, such as, type of well, its exact location;
- (ii) the lifting device used;
- (iii) the quantity of groundwater and hours of operation per day;
- (iv) the purpose or purposes for which groundwater is being extracted;
- (v) in case of irrigation well, the location and extent of area irrigated.

(3) On receipt of an application under sub-section (1), if the Board 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 laid down, a certificate of registration authorising the continued use of the water.

Provided that no person shall be refused a 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 Board to the applicant within a period of thirty days from the date of receipt of the application.

(5) In granting or refusing a permit under sub-section (3), the Board shall have regard to:-

- (a) The purpose or purposes for which water is to be used;
- (b) The existence of other competitive users;
- (c) The availability of water;
- (d) Quality of ground water with reference to use;
- (e) Spacing of groundwater structures keeping in consideration the purpose for which water is to be used;

- (f) Long term ground water level behaviour;
- (g) Any other factor relevant thereto.

(6) The certificate of registration shall be in such form as may be specified.

(7) Pending the communication of the decision under sub-section

- (1) every existing user of groundwater in the notified area

shall be entitled to the continued use of the groundwater 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, the user of Groundwater shall immediately bring this fact to the notice of the Board.

Power to alter, amend
Or vary terms of permit

35-D At any time after a permit or certificate of registration, as the case maybe, has been granted, the Board may for technical reason alter, amend or vary the terms of the permit or certificate of Registration.

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

Provided further that before taking such action, the Board shall ensure that the standing crop(s) are not damaged.

Cancellation of
Permit or certificate
Of registration

35-E. If the Board is satisfied either on a reference made to in this behalf or otherwise that:-

(a) the permit or certificate of registration granted, under sub-section (3) of section 35-B, or sub-section (3) of section 35-C, as the case may be, is not based on facts;

(c) the holder of the permit or certificate of registration has without reasonable cause failed to comply with the conditions subject to which the permit or certificate of registration has been granted or has contravened any of the provisions of this Chapter or regulations made hereunder: or

or

© a situation has arisen which warrants limiting of the use or extraction of groundwater.

Then, without prejudice to any other penalty to which the holder of the permit or of the certificate of registration may be liable under this Chapter, the Board may after giving the holder of the permit, or certificate of registration, an opportunity to show cause, cancel the permit, or certificate of registration, as the case may be.

Powers of Board
in
In respect of
Regulation and
Control of ground
water

35-F. (1) The Board or any person authorised by it in writing in this behalf shall have power to-

(a) enter on any property (private or Government owned) with the right to investigate and make any measurements concerning the land or the water located on the surface or underground;

(b) inspect the well which has been or is being sunk and the soils and any other material or of water extracted from such well;

(d) require by order in writing the persons sinking a well to keep and preserve in the specified manner specimens of soils or any material excavated there from for such period not exceeding the three months from the date of completion or abandonment of the work as may be specified by the Board and thereupon such persons shall comply with such requisition.

(e) inspect and take copies of the relevant record 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 the water is or was struck and subsequently restored or rested, the types of strata encountered in the sinking of the well and quality of the water struck) required for carrying out the purposes of its chapter.

(f) require the user of groundwater to install water measuring device or any water supplies when necessary to properly administer the water or where there is reason to believe that the user does not comply with the provisions contained in this chapter or any other sufficient reason for defending the public interest.

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

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

(h) require any user of groundwater to close down any water supply or destroy any hydraulic work found to be illegal according to the provisions of this chapter and the regulations framed hereunder:

Provided that where the user of groundwater does not comply with the requisition issued to him within a period of thirty days, the Board itself may carry out the necessary work and recover the cost from the illegal user of groundwater;

(i) 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 Chapter 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 groundwater for a specified period not exceeding thirty days;

(2) The power conferred by this section includes the power to break open the door of any premise where sinking extraction and use of groundwater 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, refuse to open the door on being called to do so.

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(3) Where the Board is of the opinion that water supply or hydraulic work ordered to be closed down under clause (h) of sub-section (1) needs to be closed down forthwith and user of it does not comply with such direction, it may direct such water supply or hydraulic work to be sealed in the manner specified by regulations.

(4) The provisions of the Code of Criminal Procedure, 1973 shall so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 93 of the said Code.

(5) Where the Board seizes any mechanical equipment or

Device under clause (h) of sub-section (1), it shall, as soon as may be, inform a magistrate and take his orders as to the custody thereof.

Service orders etc

35-G (1) Every order under clause (d) of sub-section (1) of section 35-F 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 giving 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 the order or a notice is to be served is a minor, service upon his guardian in the manner provided in sub-section (1) shall be deemed to be served upon the minor."

*Levy of user charges
For use of ground
water*

35-H (1) The Board may, for the purpose of this Chapter levy usercharges for the use of ground water in a notified area at such rates as may be specified by regulations.

(2) All money received or collected under sub-section (1) shall be credited to the Delhi Water Board Fund."

Amendment of
Section 109

6. In section 106 of the principal Act, in sub-section (1), after clause (m) the following clauses shall be added, namely:-

“(n) the form of application under sub-section (2) of section 35-B and the particulars that may be furnished therewith.

(o) the form of application under section 35-C

(p) the form of the permit and certificate of registration under sub-section (6) of section 35-B and sub-section (6) of section 35-C;

(q) the manner in which specimens of soil or other material shall be kept and presented under clause (d) of sub-section (1) of section 35-F;

® *rates of charges to be levied for the use of ground water under sub-section (1) of section 35-H*

(s) any other matter which is to be or may be specified by regulations.”

Amendment of Fourth
Schedule

7. In the principal Act, in the Fourth Schedule, after the entry relating to section 35, the following entry shall be inserted, namely:-

1	2	3	4
Chapter III-A	Regulation, Control Development of Groundwater	1000	200