IN THE HIGH COURT OF KERALA
AT ERNAKULAM

W.P.(C) No. 34292 of 2003.
Dated this the 16th December, 2003.

Perumatty Grama Panchayat

Vs

State of Kerala .

REPORTED IN 2004 (1) KLT 731.

JUDGMENT

K. Balakrishnan Nair, J.

1. The point that arises for consideration in this case in whether a Grama Panchayat can cancel the licence of a factory manufacturing non-alcoholic beverages on the ground of excessive exploitation of ground water. The brief facts of the case are the following:- .

2. The petitioner is Perumatty Grama Panchayat. The 2nd respondent Company is running a factory at Moolathara in Perumatty Grama Panchayat. Its main products are soft drinks and bottled drinking water. The said factory was established after obtaining permission from the Panchayat. It started commercial production in March, 2000 after obtaining license from the petitioner Panchayat. The main raw material used in the manufacture of beverages is water. Substantial portion of the need for water is met by exploiting ground water through bore-wells. The people in the locality raised objection against the exploitation of ground water by the Company. Therefore, the Panchayat passed Ext.P.1 resolution on 7-4-2003, deciding not to renew the licence of the factory. The translation of that resolution reads as follows: "As the excessive exploitation of ground water by the Coca-Cola Company in Plachimada is causing acute drinking water scarcity in Perumatty Panchayat and nearby places, it is resolved in public interest, not to renew the licence of the said Company. It is also resolved to inform about this decision to the Hon'ble Chief Minister of Kerala and the Hon'ble Minister for lndustries, Kerala".

In the light of the said decision, Ext.P2 notice was issued by the Panchayat to the 2nd respondent Company on 9.4.2003, the translation of which reads as follows:

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"To: The Human Resource Manager,
Hindustan Coca-Cola Beverages (Pvt.) Ltd.,
Plachimada, Kannimari,
Perumatty Grama Panchayat,

ChittoorTaluk, Palakkad District.

Notice issued under S.240 of the Kerala Panchayat Raj Act, 1994 and the Rules, by the Special Grade Secretary of Perumatty Grama Panchayat.

As ground water is excessively exploited for the use of Hindustan Coca-Cola Beverages Bottling Plant run in Plachimada and as a result, acute drinking water scarcity is felt in Perumatty Grama Panchayat and nearby places, it was resolved by the Panchayat Committee on 7.4.2003, not to renew the licence of the said Company.

Allegations have been raised that the excessive exploitation of ground water for the functioning of the said unit is causing drinking water scarcity and other severe environmental problems. In connection with this, political and mass organizations are holding agitations. The agitation by the Adivasis opposite to the gate of the Company is continuing for more than one year. Taking into account the above circumstances, to prevent the excessive use of ground water and also the consequential environmental problems, the Panchayat has taken this decision.

So, if you have anything to say, why the licence of the Company should not be cancelled, the same may be informed in writing to the Panchayat Secretary within 15 days from the dated receipt of this notice. You are hereby informed that if you fail to show cause, it shall be presumes that you have nothing to state and further action will be taken in the matter. Any loss or damage on account of this would be entirely within your responsibility."

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Upon receipt of the said notice, the Company submitted Ext.P3 reply on 30.4.2003.1 the said reply, it was pointed out that the factory is run with all necessary statutory clearances. The allegations of depletion of ground water and causing of environmental problems by the functioning of the unit were denied by file Compass Thereafter, after hearing the 2nd respondent, the Panchayat, by Resolution dated 12-5-2003, decided to cancel the licence of the Company. The translation of the said resolution reads as follows: "The Panchayat is satisfied that the Hindustan Coca-Cola Beverages Pvt. Ltd. at Plachimada is doing excessive exploitation of water and as a result, the water sources in the wells and pon in the nearby places have dried up, resulting in deterioration of quality of the limited war available, causing health/environmental problems and-acute drinking water scarcity. This has given rise to serious concern among the public. The problem of drinking water scarcity and health /environmental problems are continuing as a reality. The Panchayat, being satisfied the evidence submitted by the Company alongwith the explanation and at the time of hearing, is against facts and that the request of the Company authorities, not to cancel the licence; to renew it, cannot be considered, unanimously resolved not to renew the licence"

3. In the light of the above resolution, the Secretary of the Panchayat issued Ext. ordcr dated 15.5.2003, cancelling the licence granted to the 2nd respondent directing the

Company to stop production with effect from 17.5.2003. The 2 respondent challenged the said order before this Court and this Court directed Company to invoke the statutory remedy available to it before the appropri authority. It was also ordered therein that if the alternate remedy is invoked, status q shall be maintained till the competent authority decides the matter. Pursuanttothe s Judgment, the 2nd respondent moved the Government in appeal. Pending appeal, 3 implementation of Ext.P4 order was stayed. Ext.P5 is the appeal filed by the n respondent before the Government. After hearing both sides, the Govern e disposed of that appeal by Exe.P6 order. The operative portion of the said order re as follows:- "In the above circumstances, Government hereby order that the Perumatty Grama Panc az will constitute a te; of experts from the departments of Ground Water and Public Health and the State Pollution Control Board to conduct a detailed investigation into the allegations levelled against the Company and its products. The Panchayat will take a decision based on this independent investigation as to whether the licence granted to the Company should be renewed or cancelled. The Panchayat will get the enquiry conducted by these agencies and come to a just and fair conclusion based on this enquiry within three months from the date of receipt of this t order. All enquiries and investigations should be conducted with notice to the appellant Company. Till the Panchayat takes a final decision on the cancellation of the licence issued to the Company, the stay granted by Government on 12.6.2003 against the order of cancellation of | licence by the Panchayat will continue in operation".

Feeling aggrieved by Ext.P6, the Panchayat has filed this Writ Petition. The 2nd ' respondent Company has chosen not to challenge it According to the Pannchayat, it is the ultimate authority to decide on the matters covered by the impugned order. The protection and preservation of water sources are the exclusive domains of the Panchayat. When the Panchayat takes a decision based on relevant materials, the oovernment cannot interfere with it and dictate, how the Panchayat should actin the matter

4. The Government have filed a counter-affidavit supporting the impugned order. The 2nd respondent Company has also filed a very detailed counter-affidavit supporting Ext.P.6.

5. I heard the learned Counsel Shri. K. Ramakumar appearing for the petitioner, the learned Advocate General Shri. M. Ratna Singh appearing for the Ist respondent State and also the learned Senior Counsel Shri. Ashok Desai appearing for the 2nd if, respondent. The learned Counsel for the petitioner, took me through the various relevant provisions of the Kerala Panchayat Raj Act (hereinafter referred to as 'the Act') and submitted that the Panchayat is authorised to preserve water sources by S.218 of the Act. The preservation of water sources is one of the mandatory duties of the Panchayat, in the light of the third schedule to the Act read with S.166. In exercise of the appellate power of the Government, it is submitted, it cannot dictate to the licensing authority as to how it should work. It is also submitted that the Government F should not have directed as to which agency should hold the investigation. The Panchayat should have a free say in the matter of choice of agency for making investigation. If the Government do not raise any audit objection and the Company cooperates, the Panchayat can do independent investigation into the depletion of ground water. The learned Counsel for the petitioner,

in support of his submissions, relied on [the following decisions also: Commissioner of Police v. Gordhandas Bhanji (AIR [1952 SC 16), Orient Paper Mills Ltd. v. Union of India (AIR 1969 SC 48), Orient | Paper Mills Ltd. v. Union of India (AIR 1970 SC 1498), B. Rajagopala Naidu v. a The State Transport Appellate Tribunal, Madras (AIR 1964 SC 1573), Inter State f Transport Commission, New Delhi v. P. Manjunath Kamath (AIR 1972 SC 2250), Manjapra Grama Panchayat v. State of Kerala (1996 (2) KLT 719), Ahamed Kutty | v. State of Kerala (2001 (1) KLT 614) and also decision of the Court of Appeal in Secretary of State for Education and Science v. Metropolitan Borough of Tameside (1976 (3) AER 665). The learned Advocate General appearing for the State submitted that the Government have taken the impugned decision to safeguard the interest of both sides. The Government felt that the Panchayat should act after getting expert opinion on the disputed points. It is also submitted that the Government is sensitive to the concerns of the people in the locality and of the Panchayat, but, at the same time, the interest of industrialization has also been borne in mind. Therefore, the Government thought that the Panchayat has to take a fresh decision, after making an independent investigation. The learned Senior Counsel appearing for the 2nd respondent Company mainly raised feee following points:

(1) The Panchayat does not have any locus standii to challenge the appellate order of the Government. According to the2ndothtonginal authority is not concerned with the fate of its decision at the hands of the appellate authority. A quasi-judicial Authority like the Panchayat is not expected to challenge feee appellate decision of the Government. Reliance is placed on the decision of this Court in District Executive Of icer v. State of Kerala (1 991 (1) KLT 390) and Karur Panchayat v. State of Kerala (1996(1)KLT I 12).

(2) A writ of certiorari is meant is correct the decision making process and not the decision. The Government rendered the appellate decision after hearing both sides and also considering the arguments of both sides. So, in the absence of any flaw in the decision making process, this Court cannot interfere with it. Reliance is placed on Tata Cellular v. Union of India ((1994) 6 SCC 651) and Staple (Dressland) v. Union Territory, Chandigarh (1999) 7 SCC 89). It is submitted that the order of the Government is a consensus order and, therefore, it is quite improper for the Panchayat to challenge it The original order of the Panchayat is a nullity for the reason that the show cause notice did not give any particulars, materials or reports. It was a non-speaking order. Apart from that, the Panchayat has already taken a decision to cancel/not to renew the licence and only thereafter, the notice was issued.

(3) The Panchayat can cancel a licence, if only the licensee violates any of the condition of the licence. Further, the principles applicable for renewal of licence are not the sa as those applied at the time of issuance of licence for the first time. It is submitted that when the factory was established, there was no Rule requiring permission for digging bore-wells and even today, there is no statutory prohibition for that. Further, allegation of excessive extraction of ground water is unfounded, in the light of reports produced along with the counter affidavit.

6. The learned Senior Counsel for the 2nd respondent also relied on the decision in Swadeshi Cotton Mills v. Union of India (AIR 1981 SC 818), Mohinder Sin Gill v. Tale Chief Election Commissioner ((1978) 1 SCC 405), Institute of Charterred Accountants of India v. L.K. Ratna ((1986) 4 SCC 537) and Mahabir Prasad .S1b;tt-) of U.P. (AIR 1970 SC 1302), in support of his submissions. The preliminary objection raised by the learned Senior Counsel for the 2nd respondent regarding the maintainability of the Writ Petition at the instance of the Panchayat cannot be accepted. Of course, the Panchayat, while granting the licence, acts as a statutory authority. Apart from that, it is a body corporate constituted under Art.243B of the | Constitution of India read with S.5 of the Kerala Panchayat Raj Act. If the decision of a Panchayat is reversed by the Government on perverse grounds, it must have the right to challenge it. This point is covered by a Division Bench decision of this Court in Karunagappally Grama Panchayat v. State of Kerala (1996 (1) KLT 419). Therefore, the contentions raised by the learned Senior Counsel for the 2nd respondent t in this regard cannot be accepted.

7. The Panchayat initially tried to canvass against the jurisdiction of the Government to entertain an appeal. The appeal was filed in the light of the direction of this court. Both sides appeared and canvassed their respective case on merits. If the devision goes against one of the parties, normally, it cannot turn round and cry lack of jurisdiction, S.276 of the Act contains the provisions for appeal and revision. An appeal from the decision taken by a Panchayat would lie to a Tribunal constituted under Sec.271S of the Act. Even though this amendment was introduced with effect from 23-4-1999, even after the lapse of four years, the Government has chosen not to constitute a Tribunal, Earlier, the Government was the Appellate Authority and, therefore, appeals are even now being filed before the Government. In this case also, the Government was moved in appeal. Even assuming no appeal will lie, the Government have power under Sec.191, either suo motu or on motion made by others, to cancel any illegal resolution passed by the Panchayat. Therefore, total lack of jurisdiction cannot be alleged against the Government. Further, since this point was never raised before the Government at the time of hearing. I am not inclined to accept this contention raised on behalf of the Panchayat.

8. Exts.P1, P2 and P4 would show that action was taken against the 2nd respondent for excessive extraction of ground water and the resultant problem of drinking water scarcity and environmental problems. But, at the time of hearing before the Government, the Panchayat raised certain allegations regarding the pollution | caused by the industrial waste generated and also the impurity of the Cola produced | by the Company. The 2ncl respondent answered those allegations. The Goverllllel1t7 | while disposing of the matter, ordered an investigation and a decision on these matters also. While exercising the licensing jurisdiction, the Pancl1ayat is not competent to go into the quality of the beverages produced. It is for other appropriate authorities to look into such allegations. Regarding the pollution caused by industrial effluents, the Panchayat can look into and take appropriate action hl Consultation with expert bodies under S.233A ot the Act. But, in this case, the notice was issued only on the ground of excessive exploitation of ground water and the decision to cancel the licence was taken only on the basis of that ground. Therefore the Panchayat fairly submitted that the validity of its decision and that of the Government on this point alone nee considered by this Court in this case.

9. The learned Counsel for the petitioner would submit that the statement o petitioner in Ext.P2 regarding the excessive exploitation of ground water is expressly denied in Ext.P3 reply. But, the Company has tried to justify the exploitation, pointing out that no ill effects of the extraction of ground water have been proved. E . the materials produced by the 2nd respondent itself, it can be seen that there is hea exploitation of ground water. Ext.R2(V) is a report given by R.N. Athavale, Emeritus Scientist of the Council of Scientific and Industrial Research, National Geophysical Research Institute, Hyderabad on the Water Management at the Coca-Cola plant Mollathara Village in Palakkad District . In paragraph 7 of the said report, under the heading water requirement, it is stated as follows: "At my request, the management of Coca-Cola plant provided the following information: In the production of one litre of beverage, they are required to use 3.75 litres of water. 'total dissolved solids in the water in the beverage are required to be below 500 ppm. They a reverse osmosis plant for the purpose. The reject from this plant and the water used in clearing and washing the bottles and other purposes is sent to the Effluent Treatment Plant (ETP). the clean water coming out of the ETP is used for irrigating the lawns, shrubs and trees. Now is let out of the plant area.

The estimated water utilization figures for production year 2002 were I ,41,015 cubic n (m3) out of which 37,604 rn3 will be exported outside the plant in the form of beverage. The uses 3.75 litres of water in producing l litre of beverage.

At maximum production capacity, the plant will annually require 2,32,010 m3 of water of which 61,869 m3 will be exported as beverage. However, the plant has never operated at capacity. In general, it operates at 60% of the full capacity".

Ext.R2(Z) report on the ground water conditions in and around the factory Plachimada prepared by the Central Ground Water Board, Faridabad would show extent of extraction of ground water. The relevant portion of the said report concern the 2nd respondent reads as follows: "M/s. Coca-Cola Beverages Pvt. Ltd. is using water from 6 bore-wells and 2 dug wells the following manner: 1.2 dug wells (together) are pumped for 12 hours and 240 kilolitres/day is used. 2.6 bore-wells are pumped for 12 hours and 270 kilolitres/day is used. The total ground water pumped perd ay is 510 kilolitres. It may be mentioned that M/s. C Cola is not registered with CGWA so far."
(emphasis supplied)

Regarding the Water Requirement of the Coca-Cola plant, in the earlier part of the report, it is stated as follows: "The requirement of water for Coca-Cola plant is based on the seasonality and production volume. The average water consumption of the factory is 5 lakhs litres/day, out of which 1.5 Iakhs litres/day is being used for producing beverages. Around 3.5 Iakhs litres is used for cooling towers, boiler make up and domestic purposes. The remaining quantity of water is treated since it contains effluent discharge and is used for gardening of the premises. The water is treated and part is recycled to the plant for non process activities."

From the above materials produced by the 2nd respondent, it can be seen that substantial quantity of ground water is being extracted and used by it. The Company is functioning in 34 acres of land in Moolathara Village.

10. The only point that arises for decision in this case is whether the decision of the Panchayat to cancel the licence of the industrial unit and order its closure on the ground of excessive extraction of ground water is legal and whether the interference made with that decision by the Government in its appellate jurisdiction is sustainable. The above point is the subject-matter of a great controversy. It has turned out to be a matter of a great public concern. Articles have appeared in leading newspapers and journals, justifying and also opposing the stand of the Panchayat. There were talk shows also in television channels. These materials can be rightly suspected of exerting subtle influence on the subconscious mind of the Court.

l l. Recently, Judge Hiller B. Zobel, an Associate Justice of the Massachusetts Superior Court, U.S.A., in the Judgment in a murder case, which attracted great public attention, stated as follows: "The law, John Adams told a Massachusetts jury while defending British citizens on trial for murder, is inflexible and deaf: inexorable to the cries of the defendant; deaf as an adder to the clamours of the populace'." His words ring true, 227 years later.

Elected officials may consider popular urging and sway to public opinion polls. Judges must follow their oaths and do their duty, heedless of editorials, letters, telegrams, picketers, threats, petitions, panelists and talk shows. In this country, we do not administer justice by plebiscite.

A Judge, in short, is a public servant who must follow his conscience, whether or not he counters the manifest wishes of those he serves; whether or not his decision seems a surrender to the prevalent demands."

Dealing with the pressure of public opinion on Courts in the eighteenth century England, Lord Mansfield, in R. v. Wilkes (1770) 4 Burr 2527, which was a case in which a very popular journalist was tried for a criminal offence, stated as follows: "The constitution does not allow reasons of State to influence our judgments; God forbid it should we must not regard political consequences; how formidable so ever they might be; if rebellion was the certain consequence, we are bound to say 'fiat justitia, ruat caetum' (Let justice be done, though the heavens fall). The constitution trusts the King with reasons of State and policy: he may stop prosecutions: he may pardon offences; it is his, to Judge whether the law or the criminal should yield. We have no election. None of us encouraged or approved the commission of either of the crimes of which the defendant is convicted: none of us had any hand in his being prosecuted. As to myself, I took no part, (in another place) in the addresses for that prosecution. We did not advise or assist the defendant to fly from justice: it was his own act; and he must take the consequences. None of us have been consulted or had any thing to do wi the present prosecution. It is not in our power to stop it: it was not in our power to bring it on We cannot pardon. We are to say, what we

take the law to be: if we do not speak our real opinions, we prevaricate with God and our own consciences.

I pass over many anonymous letters I have received. Those in print are public: and some of them have been brought judicially before the Court. Whoever the writers are, they take the wrong way. I will do my duty, anawed. What am I to fear ? That mendax infamia from the press which daily coins false facts and false motives? The lies of. Calunny carry no terror to me. I trust that my temper of mind and the colour and conduct of my life, have given me a suit of armour against these arrows. If, during this King's reign, I have ever supported his Government an assisted his measures; I have done it without any other reward, than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves; without mixing in party or faction and without my collateral views. I honour the king; and respect the people: but many thinks acquired by the favour of either, are, in my account, objects not worth ambition. I which popularity: but, it is that popularity which follows; not that which is run after It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ene by noble means. I will not do that which my conscience tells me is wrong, upon this occasion to gain the huzzas of thousands, or the daily praise of all the papers which come from the pre I will not avoid doing what l think is right; though it should draw on me the whole artillery of libeis; all that falsehood and malice can invent or the credulity of a deluded populace can swallow can say, with a great Magistrate, upon an occasion and under circumstances not unlike, Ego hoc animo semper fui, ut invidiam virtute partam, gloriam, non invidiam, putarem. (I was always minded to regard unpopularity born of virtue not as a sign of envy, but of glory) .. Once for all, let it be understood, 'that no deavours of this kind will influence any man who at present sits here'. If they had any effect it, would be contrary to their intent: leaning against their impression, might give a bias the or way. But I hope and I know, that I have fortitude enough to resist even that weakness. No lil: no threats, nothing that has happened, nothing that can happen, will weigh a feather again allowing the defendant, upon this and every other question, not only the whole advantage is entitled to from substantial law and justice but every benefit from the most critical nicety of form, which any other defendant could claim under the lice objection".

The pressure built up by the press and pressure groups here, may not have reach in those proportions mentioned by Lord Mansfied, but the recent developments would show that it has started raising its head in our State also. But, the members of the judicial caravan of this State have gained the maturity to be unswered by bouquets or brickbats

12. Now, coming to the present case. At the outset, it has to be held that the order of the Panchayat to close down the unit on the finding of excessive extraction of ground water is unauthorized. The Panchayat can at best, say, no more extraction of ground water will be permitted and ask the Company to find out alternative sources for its water requirement. So, the Government's order to the extent it interfered with the closure of the unit has to be upheld.

13. The next point to be decided is whether the decision of the Panchayat that the Company should not be permitted to extract ground water is legal and if so, whether the direction of the Government to hold an investigation into the alleged excess use of I ground water resulting in creation of drinking water scarcity and to take a decision thereon should be sustained or not. Ground water is a national wealth and it belongs to the entire society. It is a nectar, sustaining life on earth. Without water, the earth would be a desert. At present, there is no law governing the control or use of ground water, submits the learned Senior Counsel for the 2nd respondent. The Kerala Ground Water (Control and Regulation) Act, 2002 has not so far been enforced. Therefore, the Senior Counsel submits, the 2nd respondent is free to exact any amount of ground water which is available underground in the land owned by it. As a good neighbour, it may have a moral obligation not to make excessive use of ground water, so as to affect the persons in the neighbour hood, it is submitted. Legally there are no fetters on the right of the 2nd respondent to extract ground water, it is pointed out. The Rule of law saves every action of the individual, which is not expressly prohibited by law, whereas, every action of the State must be supported by law, it is intended. Therefore, unfettered right is claimed to extract ground water. The above argument would appear sound at the first blush. It is true, one or two pre-constitutional decisions of the High Courts support this view. In those decisions, the act resulting in the extraction of underground water is not treated as an actionable wrong. See the decision in Kesava Bhatta v. Krishna (AIR 1946 Madras 334). The causing of depletion of water in an open water channel running through a land, by constructing a pond in the neighbouring land, which resulted in percolation of water from the channel to the pond was held to be wrong in that decision . But the extraction of water running through unspecified courses beneath the ground was observed to be not an actionable wrong, relying on English decisions of the l9th century. The principles applied in those decisions cannot be applied now, in view of the sophisticated methods used for extraction like bore-wells, heavy duty pumps etc. Further, those decisions and the above contentions are incompatible with the emerging environmental jurisprudence developed around Art.21 of the Constitution of India. Principle 2 of Stockholm Declaration, 1972 reads as follows:

"The natural resources of the earth, including the air, water, land, flora and fauna especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate."

The Apex Court in State of Tamil Nadu v. Hind Stone ((1981) 2 SCC 205) observed as follows: "**6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth These resources are not to be frittered away and exhausted by any one generation. Everv generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation**."

The Apex Court has held that the doctrine of public trust is part of the Indian Law X the decision in M.C. Mehta v. Kamal Nath ((1997) 1 SCC 388).-In the said decision the Apex Court held as follows: 24. The ancient Roman Empire developed a legal theory

known as the 'Doctrine of e Public Trust'. It was founded on the ideas that certain common properties such as rivers seashore, forests and them were held by Governnent in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about 'the environment' bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullious) or by every one in common (res communious). Under the English common law, however, the Sovereign could own these resources but the ownership was limit in nature, the Crown could not grant these properties to private owners if the effect was interfere with the public interests in navigation or fishing.. Resources that were suitable for the uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. S; Professor of Law, University of Michigan - proponent of the Modern Public Trust Doctrine an erudite article "Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law Review, Vol. 68, Part I p. 473, has given the historical background of r Public Trust Doctrine as under : 'The source of modern public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea and the seashore. The history has been given considerable attention in the legal literature, need not be repeated in den here. But two points should be emphasised. First, certain interests, such as navigation al fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain comma properties - such as the seashore, highways and running water 'perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, evidence is available that public rights could be legally asserted against a recalcitrant Government

25. The Public Trust Doctrine primarily rests on the principle that certain resources like; sea waters and the forests have such a great importance to the people as a whole that it won he wholly unjustified to make them a Subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public , rather than to permit their use for private ownership or commercial purposes.

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34. Our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea. shore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership" (emphasis supplied)

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In view of the above authoritative statement of the Hon'ble Supreme Court, it can be safely concluded that the underground water belongs to the public. The State and its

instrumentalities should act as trustees of this great wealth. The State has got a duty to protect ground water against excessive exploitation and the inaction of the State in this regard will tantamount to infringement of the right to life of the people guaranteed under Art.21 of the Constitution of India. The Apex Court has repeatedly held that the right to clean air and unpolluted water forms part of the right to life under Art.21 of the Constitution. So, even in the absence of any law governing ground water, I am of the view that the Panchayat and the State are bound to protect ground water from excessive exploitation. In other words, the ground water, under the land of the 2nd respondent, does not belong to it. Normally, every landowner can draw a reasonable amount of water, which is necessary for his domestic use and also to meet the agricultural requirements. It is a customary right. But, here, 510 kilolitres of water is extracted per day, converted into products and transported away, breaking the natural water cycle. A portion of the rainwater is stored as ground water and the balance flows away. The ground water stored in normal circumstances is partially depleted by moderate extraction for domestic and agricultural purposes and also by evaporation through vegetation on the surface. Again, when the rains come, the underground reservoirs called aquifers get recharged and the cycle goes on. If there is artificial interference with the ground water collection by excessive extraction, it is sure to create ecological imbalance. No great knowledge of Science of Ecology is necessary to infer this inevitable result. If the 2nd respondent is permitted to drain away this much of water, every land owner in the area can also do that and if all of them start extracting huge quantities of ground watered in no time, the entire Panchayat will turn a desert. In this context, it is apposite to quote the words of David B . Hunter (from the Article titled) An ecological perspective on property: A call for judicial protection of the public interest in environmentally critical resources published in Harward Environmental Law Review Vol . 12 (1988) Page 31 1, which was quoted with approval by our Apex Court in M.C. Mehta v. Kamal Nath (I997) I SCC 388). The relevant portions reads as follows: “Another major ecological tenet is that the World is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as w ell as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment leads to the unquestionable result that human activities will at some point to be constrained. Human activity finds in the natural work its external limits. In short, the environment impose constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment' s limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity the environment to service... growth, both in providing raw materials and in assimilating b product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable."

Therefore, I feel that the extraction of ground water, even at the admitted amounts by the 2nd respondent is illegal. It has no legal right to extract the much of national wean The Panchayat and the State are bound to prevent it. The duty of the Panchayat can be correlated with its mandatory function No.3 under the third schedule to Panchayat Raj

Act namely "Maintenance of traditional drinking water sources" and that of I State of Art.21 of the Constitution of India. Though ground water is not express mentioned, S.218 of the Act makes the Panchayat, the custodian of all natural water resources. Therefore, the action taken by the Panchayat against the 2nd respond to prevent extraction of ground water has to be upheld.. So, Ext.P6 order, to the ext. it allows the 2nd respondent to continue the extraction of water till the Panchayat decides the matter with the help of experts, cannot be sustained. Even assuming experts opine that the present level of consumption by the 2nd respondent is harms the same should not be permitted for the following reasons:

(1) The underground water belongs to the general public and the 2nd respondent has right to claim a huge share of it and the Government have no power to allow a pri party to extract such a huge quantity of ground water, which is a property, held in trust.

(2) if the 2nd respondent is permitted to draw such a huge quantity of ground water, similar claims of other land owners will also have to be allowed. The same will r in drying up of the underground aqua-reservoirs.

Having regard to the nature of the controversy involved, I think, the matter need n remitted for afresh decision, to the Government. Normally, this Court demolishes a decision remits it to the appropriate authority to pass consequential orders. The executive authority designated by the Legislature alone can normally take a decision and not this Court. But, it no longer be here say to say that this Court can, in appropriate cases, pass those orders, the designated authority would have passed, had it exercised its discretion rightly, in vi the decision of the Apex Court in The Comptroller & Auditor General v. K. S. Jagann, (AIR 1987 SC 537). in the said decision, the Apex Court has held as follows:

"There is thus no doubt that the High Courts in India exercising their jurisdiction u Art.226 have the power to issue a writ of mandamus or a writ in the nature of mandamus pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can. in the exercise of its jurisdiction underArt.226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority and in a proper case. in order to prevent injustice resuming the concerned parties. the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and law fully exercised discretion." -
{empasis is supplied)

14. The learned Senior Counsel appearing for the 2nd respondent rightly pointed out that this Court, while judicially reviewing Ext.P6 is concerned with the decision or making process and not with the decision. But, if the administrator fails to take into account relevant matters or takes into account irrelevant matters or misdirects himself in law while rendering the decision, then also, the decision making process will be vitiated. In other words, a fair hearing of both sides will not be sufficient to save the decision from judicial review, but, it should also not be unreasonable in the 'Wednesbury' sense. In the case on hand, the Government failed to take into account the legal position that the State is the trustee of natural resources like the ground water and the 2nd respondent does not have any legal right to claim a huge shares of it. Therefore, the decision making process is vitiated and this Court can review the said decision. So, the objection raised by the learned Senior Council on behalf of the 2nd respondent that the decision making process in relation to the impugned order being flawless, this Court may keep its hands off, cannot be accepted.

15. In view of the facts disclosed in this case and also in the light of the doctrine of public trust, I feel that the 2nd respondent should be restrained from drawing ground water excessively. Like every other land owner, the 2nd respondent can also be permitted to draw ground water by digging wells, which must be equivalent to the water normally used for irrigating the crops in a 34 acre plot. What can be the quantity of water that the 2nd respondent can be permitted to use has to be decided by the Panchayat. Recently, this Court allowed a Panchayat to grant licence to a small drinking water unit, provided the Ground Water Department reports that the functioning of the unit will not affect the availability of drinking water in the neigbourhood. The said direction cannot be allowed in this case, in view of the huge quantity of water extracted. Accordingly, the following directions are issued:

1. The 2nd respondent shall stop drawing ground water for its use after one month from today.

2. The Panchayat and the State shall ensure that the 2nd respondent does not extract any ground water after the said time limit. This time is granted to enable the respondent to find out alternative sources of water.

3. The Panchayat shall renew the licence and shall not interfere with the functioning the Company on the ground mentioned in Ext.P4, if it is not extracting ground w; and is depending for its water needs on other sources.

4. The Panchayat shall, with the assistance of the Ground Water Department, find the quantity of water that a land owner with 34 acres of land would extract for domestic and agricultural purposes. At the time of hearing, the learned Counsel for the Panchayat raised a serious objection to the direction of the Government to conduct the study the Ground Water Department and other official agencies. The complaint of the learned Counsel was that the reports of such agencies lack credibility. People look upon those reports with suspicion. It is unfortunate that we have to make arrangements for 'guarding the guards'. l think, the media can take

that role. Ground Water Department shall hold the inspection with notice to the Panchayat the 2nd respondent. It shall publish the details of the instruments used and divulge to the parties, the scientific principles based on which they work. The readings data collected shall be furnished to both sides. The media shall be permitted to watch the inspection. The 2nd respondent shall permit the accredited media persons to accompany the officials of the Ground Water Department and the Panchayat. Though their presence may be inconvenient or irritating to some, it will sub serve public interest. Transparency will lend credence to the reports. Sunlight is the best disinfectant

5. The 2nd respondent shall be permitted only to draw that much quantity of water ascertained as per direction No. 4 above and that too, from open dug wells transparent manner, subject to inspection and monitoring by the Panchayat and Ground Water Department

6. The arrangement for drawing water and its monitoring should be done in a transparent manner with access to the Panchayat and the media.

7. The Panchayat shall ensure that all other wells including the bore-wells of the respondent are closed down after one month. Ext.P3 order of the Panchayat and Ext.P6 order of the Government are mod to the above extent.

The Writ Petition is disposed of as above. There will be no order as to costs.