

## GROUND WATER ACT

Act 55 of 1969 – 1 September 1970

### ARRANGEMENT OF SECTIONS

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## GROUND WATER ACT

### 1. Short title

This Act may be cited as the Ground Water Act.

### 2. Interpretation and application

(1) In this Act—

“Authority” means the Central Water Authority established under the Central Water Authority Act;

“ground water” means any water under the surface of the ground, and includes underground streams, natural subsurface reservoirs and lakes and any water held underground in a zone of saturation, but does not include water flowing in or contained in artificial pipes, conduits or reservoirs, nor does it include surface water having as its immediate origin atmospheric precipitation or natural springs issuing at the ground surface, and flowing over, or retained on, the surface of the ground;

“ground water licence” means a licence issued under section 7;

“works” means any structure, apparatus, contrivance or device for abstracting, diverting, obstructing, measuring or using ground water.

(2) This Act shall bind the State.

[S. 2 amended by Act 48 of 1991.]

### 3. Ground water public property

Subject to this Act, all ground water shall vest in the State.

[S. 3 amended by Act 48 of 1991.]

#### 4. Licence to abstract ground water and prohibition of pollution

(1) Subject to this Act, no person shall—

- (a) abstract, divert, obstruct, measure or use any ground water; or
- (b) construct or erect any works in or over any ground water,

unless he has obtained a licence under this Act authorising him to do so.

(2) (a) Where any person licensed under this Act, by any physical, chemical or biological means or process, so alters the composition or quality of ground water that it is likely to cause injury to any person, animal or plant using such water, he shall commit an offence.

(b) Where an offence is committed under paragraph (a), the Authority may, with the approval of the Minister, suspend or revoke the licence, without prejudice to any other proceeding that may be instituted against the holder of the licence.

(3) A ground water licence shall be in such form as the Minister may determine.

[S. 4 amended by Act 32 of 1989.]

#### 5. Application for licence

(1) Any person who wishes to obtain a ground water licence shall make an application in the prescribed form to the Authority and cause notice of the application to be published in the *Gazette* and in 2 daily newspapers approved by the Authority.

(2) The applicant shall furnish to the Authority such information, data, documents and plans as it may require.

(3) Every application for the renewal of a ground water licence shall be made in the prescribed form to the Authority not later than 6 months before the expiry of the existing licence and shall be published in the *Gazette* and in 2 daily newspapers approved by the Authority.

(4) The Authority may exempt any applicant for a ground water licence who, before 1 September 1970, was drawing ground water from a well exclusively for domestic purposes, from publishing his application as required by subsections (1) and (3).

#### 6. Right and grounds of objection to licence

Any person may, within 21 days of the last day of publication under section 5, object to the grant or the renewal of a ground water licence by lodging written reasons with the Authority which shall within 15 days communicate these reasons to the applicant by registered post.

#### 7. Decision of Authority

(1) (a) The Authority shall, after considering the merits of an application and any objections to it, grant or reject it.

(b) The decision shall be communicated in writing, within 21 days of it being made, to the applicant and to any objector and shall specify the operations which the applicant will be allowed to carry on and the conditions subject to which the ground water licence may be issued.

(2) (a) Subject to paragraph (b), where the application is granted, a ground water licence shall be issued to the applicant on payment of the prescribed fee.

(b) An applicant who has benefited from an exemption under section 5 (4) shall, where his application for a ground water licence is granted, be issued with a licence free of charge.

## **8. Appeal against decision of Authority**

(1) Any person aggrieved by a decision of the Authority under section 7 may within 21 days of the decision being duly notified to him appeal in writing against the decision to the Supreme Court, setting out the grounds of such appeal.

(2) Any appeal under subsection (1) shall be proceeded with, heard and determined in such manner as may be provided by rules made by the Supreme Court.

(3) On any such appeal, the Supreme Court may give any such directions as it thinks proper, including any such direction as to the costs of the appeal, and the order of the Supreme Court shall be final and conclusive.

(4) Nothing in this section shall be construed as in any way derogating from the power of the Supreme Court to make or issue any prerogative writ or order.

[S. 8 amended by Act 29 of 1992.]

## **9. Exemption for agreement with Government**

Nothing in this Act shall affect the rights of any person who, before 1 September 1970, was a party to a written agreement with Government in relation to the abstraction, diversion, obstruction, measurement or use of any ground water.

## **10. Payment for ground water abstracted**

(1) Any person who holds a licence issued under section 7 shall pay to the Authority the prescribed charges in respect of ground water abstracted.

(2) Any fee or charge collected by the Authority shall, as soon as is reasonably practicable, be paid into the Consolidated Fund.

[S. 10 amended by Act 32 of 1989; s. 20 of Act 14 of 2009 w.e.f. 1 July 2009.]

## **11. Licensee to keep records**

Any person licensed under this Act shall keep such records of his operations as may be required in writing by the Authority and produce such records for inspection whenever required to do so by the Authority.

## **12. Power of entry**

(1) Any officer authorised in writing by the Authority, on giving 24 hours' notice to the occupier of any land, may—

- (a) enter the land for the purpose of—
  - (i) inspecting any ground water or any works;
  - (ii) taking any measurement which may appear to the Authority to be necessary;
  - (iii) ascertaining whether an offence has been, is being or is about to be committed against this Act;
  - (iv) conducting investigations and experiments to ascertain the availability and amount of ground water under such land and the possibility of exploiting such ground water; or
  - (v) giving effect to this Act; or
- (b) install temporarily on any such land any machinery or instrument in connection therewith.

(2) The occupier of any land to which an officer has been given access under subsection (1) shall, where it is necessary, provide a passage for materials and for persons.

(3) Where the owner or occupier of any property sustains any damage, including the loss of value to the property by reason of any works carried out by an officer authorised under subsection (1), the owner or occupier shall be entitled to compensation in respect of the damage.

(4) Where, under subsection (3), compensation is applied for and is refused or where the owner or occupier of the property is dissatisfied with the amount of the compensation offered, whatever the value of the property involved or the amount of compensation claimed, notwithstanding any other enactment, the owner or occupier may, within 15 days of the date on which the decision of the Authority has been duly notified to him, require the Authority to appoint a tribunal, composed of one or more members, for the purpose of settling the dispute.

## **13. Persons striking ground water**

(1) Any person who, in the course of any digging, boring or drilling operations on any premises, strikes ground water shall immediately notify the Authority in writing of the existence of the ground water.

(2) The owner of such premises, or where the owner is unknown, the occupier, shall then take such measures and comply with such directions as the Authority may require for the conservation of such ground water.

## **14. Steps to be taken by Authority**

Where any person satisfies the Authority that he has insufficient means to comply with any direction given by the Authority under this Act, the Authority may take such steps as it thinks advisable at its own expense for the

conservation of ground water, and such person may apply for a licence under section 5.

### 15. Offences

(1) Subject to subsection (2), any person who fails to comply with this Act or with the conditions attached to a ground water licence shall commit an offence, and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 6 months.

(2) (a) Any person who contravenes section 4 (2) shall commit an offence and shall, on a first conviction, be liable to a fine of not less than 250,000 rupees and to imprisonment for a term not exceeding 2 years and, on a second or subsequent conviction, to a fine of not less than 500,000 rupees together with imprisonment for a term of not less than 2 years.

(b) The Court may, in addition to any penalty inflicted, order the forfeiture or the dismantling of any works used in the commission of the offence.

(3) Notwithstanding—

(a) section 114 of the Courts Act;

(b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try any offence and impose any penalty provided under this Act.

[S. 15 amended by Act 32 of 1989.]

### 16. Regulations

The Authority may make regulations generally for the purposes of this Act, and any such regulations, may, without prejudice to the generality of this power—

(a) prescribe anything which is permitted or required by this Act to be prescribed;

(b) provide for returns to be made by holders of a ground water licence.

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