

**THE ORISSA GROUND WATER (REGULATION, DEVELOPMENT AND
MANAGEMENT) BILL, 2011**

A

BILL

**TO REGULATE THE DEVELOPMENT AND MANAGEMENT OF
GROUND WATER AND MATTERS CONNECTED THEREWITH OR
INCIDENTAL THERETO.**

BE it enacted by the Legislature of the State of Orissa in the Sixty-second Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Orissa Ground Water (Regulation, Development and Management) Act, 2011.
 - (2) It shall extend to the whole of the State of Orissa.
 - (3) It shall come into force on such date and in such area or areas as the Government may, by notification, appoint and different dates may be appointed for different areas of the State.
2. In this Act, unless the context otherwise, requires, -
 - (a) “agricultural use” means water used for raising plants, crops or livestock and other allied activities;
 - (b) “artificial recharge to ground water” means the process by which ground water reservoir is augmented at a rate exceeding that under natural condition of replenishment;
 - (c) “Authority” means the Orissa Ground Water Authority established under section 3;
 - (d) “building”, includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not;
 - (e) “domestic use” means water used by the human population for drinking and other domestic purposes and includes consumption of water for such similar relevant purposes for livestock;
 - (f) “Government” means the Government of Orissa;

- (g) “ground water” means water existing in an aquifer below the surface of the ground at any particular location regardless of the geological formations in which it is stationary or moving and include all ground water reservoirs and springs and base flows in streams and rivers;
- (h) “Member” means a Member of the Authority and includes the Chairperson;
- (i) “notified area” means any area notified by the Government under sub-section (2) of section 5;
- (j) “owner” includes a mortgagee in possession, a person who for the time being is receiving or is entitled to receive or has received the rent or premium or any other consideration for any building whether on his own account or on account of, or on behalf of or for the benefit of any other person or who would so receive the rent or premium or any other consideration or be entitled to receive rent or premium or any other considerations if the building were let out to tenant; and include the Head of a Government Department, General Manager of a Railway, the Secretary or other Principal Officer of a local authority, statutory authority or Company, in respect of building under their respective controls;
- (k) “prescribed” means prescribed by the rules made under this Act;
- (l) “rainwater harvesting” means the act of collection and storage of rainwater at surface or in sub-surface aquifer;
- (m) “rural area” means any area other than the urban area;
- (n) “sink” means with all its grammatical variations and cognate expressions in relation to a well, includes digging, drilling, or boring of a new well or in existing well or deepening and modification (of radials and galleries) of the existing wells;
- (o) “urban area” means a municipal corporation constituted under the Orissa Municipal Corporation Act, 2003 and a Municipality or Notified Area Council constituted under the Orissa Municipal Act, 1950;
- (p) “user of ground water” means any person or persons including an institution, a company or an establishment, whether Government or non-Government who or which extract or use or sell ground water for any purpose including domestic purpose made either on personal or community basis;

- (q) “watershed” means an area confined within the topographic water divide line as identified and notified by the Government, from time to time, having regard to the purposes of the Act;
- (r) “well” means a well sunk for the search for extraction of ground water by a person, except by the authorized officials of the Central or State Government for carrying out scientific investigations, exploration, development, augmentation, conservation, protection or management of ground water , and shall include open well, dug well, bore well, dug-cum-bore well, tube well and filter point, collector well, infiltration gallery, recharge well, disposal well or any of their combinations or variations.

CHAPTER II

CONSTITUTION AND FUNCTIONS OF THE AUTHORITY

- 3. (1) The Government shall, for the purpose of effective regulation, development and management of the ground water, by notification, establish with effect from such date as may be specified in the notification an Authority to be known as the Orissa Ground Water Authority.
- (2) The Authority shall consist of the following members, namely : -
 - (a) Secretary to Government, Department of Water Resources, Government of Orissa, who shall be the Chairperson;
 - (b) Chief Engineer and Director, Ground Water Survey and Investigation (GWS&I), Orissa, who shall be the Member Secretary;
 - (c) Regional Director, South Eastern Region, Central Ground Water Board (CGWB), Bhubaneswar;
 - (d) Joint Director, Agriculture (Engineering), Directorate of Agriculture and Food production, Orissa;
 - (e) Managing Director, Agricultural Promotion and Investment Corporation of Orissa Limited (APICOL), Bhubaneswar;
 - (f) Director, Special Projects, Panchayatiraj Department, Orissa;
 - (g) Chief Engineer, Rural Water Supply and Sanitation (RWSS), Orissa;
 - (h) Chief Engineer Rural Works, Orissa;
 - (i) Member Secretary, State Pollution Control Board, Orissa; and
 - (j) Chief Executive, Orissa Space Application Centre (ORSAC), Bhubaneswar.

4. (1) In order to enable the Authority to properly function or exercise the powers under this Act, the Government may provide such member of technical personnel and other staff, as it may consider necessary.
- (2) The functions and the terms and conditions of service including the requisite qualification and experience of such technical personnel and other staff shall be such as may be prescribed.
5. (1) If the Authority after consultation with various expert bodies, including Central Ground Water Authority (CGWA) is of the opinion that it is necessary or expedient in the public interest to regulate the extraction or the use or both, of ground water in any form, in any area, it may advise the Government to declare such area to be a notified area for the purposes of this Act.

Explanation. – Central Ground Water Authority (CGWA) is an authority constituted under the provision of the Environment (Protection) Act, 1986 ;

- (2) The Government may, on receipt of the advice of the Authority under sub-section (1), by notification, declare any such area to be a notified area with effect from such date, not being earlier than three months after the date of publication of the notification in the official Gazette, as may be specified in the notification.
- (3) Every such notification shall, in addition to its publication in the official Gazette, be published in not less than two daily newspapers in regional language having wide circulation in the State and shall also be served in all or any of the following modes as the Government may think fit, namely;-
 - (a) by affixing a copy of the notification in some conspicuous part of the offices of the village Panchayats or Municipalities located in the said area;
 - (b) by proclaiming by beat of drum or by means of loudspeakers the contents of the notification in the said area; or
 - (c) in such other manners as may be prescribed.
- (4). If in the opinion of the Authority, the availability of the ground water has improved in a notified area, it may, in consultation with various expert bodies including CGWA, advise the Government to de-notify such area in the same manner as provided for declaring as area to be notified area.
- (5) The Authority shall also take steps to ensure that extraction of ground water resources does not exceed the natural replenishment to the aquifers and wherever there is mismatch, steps shall be taken to ensure augmentation of ground water recharge in addition to regulatory measures.

- (6) The Authority shall maintain and upkeep the database on ground water related information.
6. (1) Any user of ground water desiring to sink a well in the notified area for any purpose other than the purpose of domestic use, agricultural use and such other uses specified by Government, from time to time, either on personal or community basis shall apply to the Authority for grant of a permit and shall not proceed with any activity connected with such sinking unless a permit has been granted by the Authority;
- (2) Every application under sub-section (1) shall be made in such form containing such particulars and in such manner as may be prescribed.
- (3) On receipt of an application under sub-section (1), if the Authority is satisfied that, -
- (i) it shall not be against public interest to do so, if may grant subject to such conditions and restrictions as may be specified, a permit authorizing the extraction and use of ground water and the conditions shall include mandatory provision of artificial recharge structures of appropriate size to be constructed by the applicant within a period as specified by the Authority;
- (ii) sinking of such well would be against public interest, it may, by recording reasons thereof, refuse to grant permit:

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 Authority to the applicant within a period of sixty days from the date of receipt of the application.
- (5) In granting or refusing a permit under sub-section (3) the Authority shall have regard to different aspects of ground water regime of the area as may be prescribed.
- (6) The permit shall be in such form as may be prescribed.
7. (1) Every existing user of ground water in the notified area shall, within a period of one hundred twenty days from the date as specified in the notification under sub-section (2) of section 5, apply to the Authority for the grant of a certificate of registration recognizing its existing use in such form and in such manner as may be prescribed:

Provided that the Authority may entertain any such application after expiry of the said period of one hundred twenty days, if it is satisfied that the user was prevented by sufficient cause from filling application within the said period.

(2) An application under sub-section (1) shall contain such particulars, as may be prescribed.

(3) On receipt of an application under sub-section (1), if the Authority 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 specified, a certificate of registration in such form as may be prescribed, authorizing the continued use of ground water or refuse to grant certificate of registration in the Authority is of the opinion that continuance of the use of ground water shall go against public interest;

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 competent authority to the applicant within a period of sixty days from the date of receipt of the application and if no decision is intimated within the said period, it shall be deemed to have been granted till the Authority passes order thereon.

(5) In granting or refusing a certificate or registration under sub-section (3), the Authority shall have regards to such aspects as may be prescribed.

(6) Pending communication of the decision on an application under sub-section (1) every existing user of ground water in the notified area shall be entitled to the continued use of the ground water in the same manner and in the same quantity, as he was entitled prior to the date of filing application.

(7) If a registered well becomes defunct, the user of ground water should immediately bring this fact to the notice of the Authority.

8. On and after establishment of the Authority, every person, who sunk well in any area of the State other than the notified area, shall be liable to register his well with the Authority for the purpose of this Act in such manner as may be prescribed.

9.(1) Every rig owner shall register his machinery with the Authority in such manner and on payment of such fee as may be prescribed.

(2) Every rig owner shall follow the instructions issued by the Authority, from time to time.

10. At any time, after a permit or certificate of registration, as the case may be, has been granted, the Authority may, for the reasons to be recorded in writing, alter, amend or vary the terms of the permit or certificate of registration, as the case may be:

Provided that no order under this section to the disadvantage of the user shall be passed unless the user of ground water has been given an opportunity of being heard:

Provided further that, before taking such action, the Authority shall ensure that the standing crops, if any, are not damaged.

11. (1) If the Authority is satisfied either on a reference made to it in this behalf or otherwise, that –

(a) the permit or certificate of registration granted under subsection (3) of section 6 or sub-section (3) of section 7, as the case may be, is not based on correct facts; or

(b) 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 Act or the rules made thereunder; or

(c) a situation has arisen which warrants limiting the use or extraction of ground water,

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

(2) Where a certificate of registration or permit has been cancelled under sub-section (1), the holder of such certificate or permit, as the case may be, shall surrender his certificate of registration or the permit, as the case may be, to the Authority within such period as may be directed by it.

12. (1) the Authority shall function subject to the control and supervision of the Government.

(2) The Authority or any person authorized by it in writing in this behalf shall have powers, -

(a) to enter, at any reasonable time, on any property whether Private or Government owned, with the right to investigate and make any measurement concerning the land or the water located on the surface or underground;

(b) to inspect the well which is being sunk or has been sunk and the soils and other materials excavated there from;

(b) to take the specimens of soil or other materials or of water extracted from such well in the manner as may be prescribed;

(d) to pass order in writing, the persons sinking a well to keep and preserve in the prescribed manner specimen of soils or any material excavated there from for such period not exceeding three months from the date of completion or abandonment of the work as may be specified by the Authority.

(e) to inspect and to 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 the quality of the water struck) required for carrying out the purposes of the Act;

(f) to direct the user of ground water to install water-measuring devices on any ground water abstraction structure;

(g) to seize any equipment or device utilized for illegal sinking and demolish the work executed fully or partly;

(h) to direct any user of ground water who does not comply with the provisions of the Act and rules framed there under to close down the extraction of ground water, disconnect its power supply and demolish any hydraulic work found to be illegal according to the provisions of this Act and rules made there under;

(i) to enter and search at all reasonable time with such assistance, if any, as it considers necessary, any place in which it has reasons to believe that offence under this Act has been or is being committed and pass order in writing to the person who has been or is committing the offence not to extract or use the ground water for a specified period not exceeding thirty days;

(j) to issue such direction, as it may deem fit, with regard to defunct well for prevention of degradation of the ground water; and

(k) to exercise such other powers as may be necessary for carrying out the purposes of this Act or any rules made there under.

(3) Where the user of ground water does not comply with the direction issued under clause (f) sub-section (2) to him within a period of sixty days the Authority itself may install such water measuring device and recover the cost from the defaulting user of ground water.

(4) The power conferred under sub-section (2) includes the power to break open the door or any premises where sinking, extraction and use to ground water 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, refuses to open the door on being called upon to do so.

(5) 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 the apply to any search to seizure made under the authority of a warrant issued under section 93 of the said code.

(6) where the Authority seizes any mechanical equipment or device under clause (g) of sub-section (2), it shall, as soon as may be, inform a magistrate and take his orders as to the custody thereof.

13.(1) Every order made under sub-section (2) of section 12 shall be served. –

(a) by giving or tendering the order of notice by hand 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 member or servant of his family or by affixing on some conspicuous part of the land or building in which the well is being sunk.

(2) Where the person on whom an order of notice is to be served is a minor, service upon his guardian in the manner as provided in sub-section (1) shall be deemed to be a service upon the minor.

14. No person shall be entitled to claim any damage or compensation from the Government or the Authority for any loss sustained by him by virtue of any action taken under this Act.

15 (1) The Authority may, by general or special order, in writing, direct that all or any of the powers or duties which may be exercised or discharged by it shall, in such circumstances and under such conditions, if any, as may be specified in its order, be exercised or discharged by the Chairperson or the Member-Secretary or any other technical personnel or staff of the Authority specified in this behalf in the order.

(2) The Government may, in consultation with the Authority, by general or special order, in writing, direct that any of the powers or duties which may be exercised or discharged by the Authority, may be exercised or discharged by such officer of the Government as may be specified in the order.

16. All members, technical personnel or staff of the Authority shall, when acting or purporting to act in pursuance of the provisions of the Act or of any rules made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

17. No prosecution, suit or other legal proceeding shall be instituted against the Government, the Authority or any other officer of the Government or any member or any technical personnel or staff of the Authority for anything done or intended to be done in good faith under this Act, or the rules made thereunder.

18. (1) No prosecution for an offence under this Act shall be instituted except or by or with the written consent of the Authority or a person authorized in the behalf by the Authority.

(2) No court inferior to that of a Magistrate First Class shall try any offence under this Act.

CHAPTER II

RAINWATER HARVESTING FOR GROUND WATER RECHARGE

19.(1) Subject to the provisions of this Act and the rules made thereunder, the Authority may, for the purpose of improvement of ground water in the State, undertake and promote various schemes in the State for rainwater harvesting through construction of feasible recharge structures in rural and urban areas with adequate thrust on watershed management and mass awareness programmes.

(2) Subject to the direction of Government, the Authority may issues guidelines for identifying recharge worthy areas in the State for the purpose of recharging ground water by harvesting rain water.

(3) The Authority may give appropriate direction, -

(a) to any Department of Government whose activity has direct or indirect impact on the ground water under the notified area to include rain water harvesting in its developmental schemes.

(b) in respect of all urban areas with a population of five lakhs or more, to an owner of the building having a plinth area more than two hundred square meters or more than three floors irrespective of the plinth area, to construct appropriate ground water recharge structure in such manner and within such period as may be specified in such direction and any violation to comply with such direction without prejudice to any penalty that may be imposed on such owner under this Act, the authority may construct or cause to be constructed the recharge structure and the expenses incurred for such construction shall be recovered, from the owner to whom such direction was given, if not paid within the prescribed period, as an arrear of land revenue.

(4) Notwithstanding anything contained in any law for the time being in force, where in any urban area falling under any notified area, -

(a) any local authority or any other authority in charge of approving the building plan shall impose a condition for rooftop rainwater harvesting structure in the building plan having a plinth area more than two hundred square meters or more that three floors irrespective of the plinth area, while according approval for construction of such building;

(b) any agency charged with the duty of supply of electric energy to a building and any agency charged with the duty of supplying water shall not give electric connection or water connection, as the case may be, to any newly constructed building or convert to a permanent use any connection already taken, unless the application for such connection is accompanied by a No Objection Certificate from the Authority:

Provided that temporary water supply connections and electric connections may be given by the agencies, if the application is accompanied by a plan, sanctioned by the authority competent to sanction such building plan.

CHAPTER IV

MISCELLANEOUS

20. If any person contravenes or fails to comply with, any of the provisions of this Act or any rule made thereunder, or obstructs the Authority or any other person authorized by it to exercise any of the powers under this Act, shall be punishable with –

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

(ii) for the second and subsequent offence, with imprisonment for a term which may extend to six months, or with fine, which may extend to rupees fifteen thousand or with both.

21. (1) Any offence committed under this Act may be compounded by the Authority or any officer authorized in this behalf by the Government, by general or special order, either before or after the institution of the proceedings subject to such conditions and with such amount as may be prescribed.

(2) Where an offence has been compounded under sub-section (1), after institution of prosecution, such composition shall have effect of an acquittal on the accused with whom the offence has been compounded.

22. (1) Where an offence under this Act has been committed by a Company, every person who, at the time the offence was committed, was in charge of or was responsible to the Company for the conduct of the business of the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment under this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or in connivance of, or is attributable to any negligence on the part of any Director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purpose of this section, -

- (a) “Company” means any corporate body and includes a firm or other association of individuals; and
- (b) “Director” in relation to a firm, means a partner in the firm.

23. (1) Any person aggrieved by the decision or action of the Authority under this Act may, within a period of sixty days from the date on which the action is taken or the decision is communicated to him, and on payment of such fees as may be prescribed, may appeal to the Agriculture Production Commissioner:

Provided that the appellate authority may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal in time.

(2) on receipt of an appeal under sub-section (1), the appellate authority shall, after giving the applicant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

Explanation. – For the purpose of this section the Agriculture Production Commissioner means an officer who has been appointed by the Government from time to time.

24. No act or proceeding of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Authority.

25. (1) The Government may, by notification, make rules to carry out the purposes of this Act.

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

- (a) the functions and terms of conditions of service of the employees of the Authority under sub-section (2) of section 4;
- (b) any other manner of effecting service of the notification under clause (c) of sub-section (3) of section 5;
- (c) the form of application under sub-section (2) of section 6 and the particulars that may be furnished with the application;
- (d) factors to be considered for grant or refusal of permit as required under sub-section (5) of section 6;
- (e) the form of permit under sub-section (6) of section 6;
- (f) the form of application and the particular to be mentioned in such application under sub-sections (1) and (2) of section 7;

- (g) certificate of registration under sub-section (3) of section 7;
- (h) factors to be considered for grant or refusal of certificate of registration as required under sub-section (5) of section 7;
- (i) manner of registration of existing well under section 8;
- (j) manner of registration of rig owner and the rate of fee to be paid under sub-section(1) of section 9;
- (k) the manner in which the specimens of soils or other materials shall be kept and preserved under clause (d) of sub-section (2) of section 12;
- (i) the conditions on which and the amount payable for composition of the offence under section 21;
- (m)the amount of fees to be accompanied with the application for appeal under section 23; and
- (n) any other matter which is to be, or may be prescribed under this Act.

26. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, do anything which appears to it to be necessary or expedient to remove the difficulty;

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of the Act.

(2) Any order made under this section, shall be laid before the State Legislature.

STATEMENT OF OBJECTS AND REASONS

Even though the average stage of ground water development in Orissa is low in comparison to other States of the country, based on the regional hydro-geologic, agro-climatic and socio-economic status, the ground water utilization in some of the Blocks have been rather intensive. To prevent quantitative and qualitative degradation, the extraction of ground water should not exceed the scope of its natural recharge. There are wide variations in patterns of ground water recharge and utilization in different Blocks of the State. The prevailing situation is likely to be further impacted due to the on-going urbanization, industrialization and climate change processes.

Keeping these facts in view, a new legislation titled “The Orissa Ground Water (Regulation, Development and Management) Bill, 2011” is being proposed for enactment. In brief, the Bill envisages setting up the Orissa Ground Water Authority to enforce its various provisions. In consultation with the experts, the Authority will identify ground water problematic areas in the State and advise the Government to notify the same. In the notified areas the users of ground water have to seek prior permissions to construct new wells except for the purpose of domestic and agriculture use and such other uses to be notified by the Government from time to time. The Authority shall maintain database of all existing and new wells for regular monitoring of ground water status in the State. All the rig-owners operating in the State have to be registered with the Authority. In Specific urban areas for certain types of building, rooftop rainwater harvesting will also be made mandatory. In the Bill, various penalties have been prescribed for contravention of its provisions. The Government of Orissa shall be authorized to make rules for carrying out the purposes of the Bill.

The Bill seeks to achieve the above objectives.

NAVEEN PATNAIK

Member- in-Charge