Kerala High Court
Hindustan Coca-Cola Beverages ... vs Perumatty Grama Panchayat on 7 April, 2005
Equivalent citations: 2005 (2) KLT 554
Author: M.Ramachandran
Bench: M Ramachandran, K Balachandran
JUDGMENT

M.Ramachandran, J.

1. W.A.No. 2125 of 2003 and W.A.No. 215 of 2004 arise from the judgment in W.P.(C) No. 34292 of 2003 dated 16.12.2003 (Reported in 2004 (1) KLT 731). The Writ Petition had been filed by a local authority (Perumatty Grama Panchayat) challenging Ext.P6 order passed by the Government. The above said order came to be passed on an adjudication, as directed by this Court at an earlier round of the proceedings. This had arisen, when the Panchayat refused to renew a licence, which had been earlier issued, facilitating an industrial establishment to manufacture branded items of beverages.

2. The Writ Petition had been disposed of with certain findings, observations and directions, the details of which could be stated later. The second respondent to the proceedings is a limited company--Hindustan Coca-Cola Beverages Private Limited (hereinafter referred to as 'the company'). Challenging such of those observations, which were likely to have hindered their normal manufacturing and sales activities, W.A.No. 2125 of 2003 came to be preferred, at the instance of the company. The Panchayat has preferred W.A.No. 215 of 2004 feeling aggrieved by some other findings that had been entered into by the learned Single Judge, which would have, according to the Panchayat, gone against their interests.

3. W.A.No. 1962 of 2003 had come to be filed at the instance of the said company, aggrieved about the judgment passed in W.P.(C) No. 31286 of 2003 dated 14.11.2003, which also concerned the issue of licensing. As the main issues have been agitated in the connected Writ Appeals, it was also posted along with them.

4. During the pendency of W.P.(C) No. 34292 of 2003, the Panchayat had taken further steps for cancelling the licence granted to the company and such proceedings had been subjected to an appeal, as envisaged under Section 276 of the Kerala Panchayat Raj Act. However, the orders had been stayed by the Government. W.P.(C) No. 12600 of 2004 had been filed by the Panchayat contending that the Government was not within its rights to tamper with such orders and the proceedings should not have been so interfered with. This too had been referred for being considered by a Bench, along with other cases.

5. Mr. K. Ramakumar, learned counsel for the Panchayat, submits that since an appeal had been filed by the company against the steps taken for cancellation of the licence by the Panchayat, now that a statutory Tribunal has already been constituted, the appeal is to be deemed as transferred to such Tribunal. He submitted that perhaps without going to the merits or demerits of the contentions raised by the parties, it would have been proper for all concerned to agitate the matters before the said authority and a decision of this Court could have been deferred to a future occasion.

6. Appearing on behalf of the State Government Mr. Rajan Joseph, the learned Additional Advocate General, also voiced this opinion. But Mr. Vaidyanathan, senior counsel representing the company, points out that although an appeal is pending, it arose as an off shoot of collateral proceedings, while the matter was being actively agitated before this Court by the parties, and a finality would not have come, if the parties were relegated to pursue such remedies. According to him, since the validity and veracity of the Government Orders had also been under challenge, the Tribunal would have been disabled to go into or effectively adjudge on such issues. On our part, we find that the matters had been pending before this Court for almost two years, and a large amount of time had been spent and reports from expert bodies, appointed by the Court, have been made available. Therefore relegating the matter to be decided by the Tribunal may not be a proper procedure,

since the effort is to have a lasting solution to the disputes that had cropped up, for unfortunate reasons. Hence the parties were required to state their respective cases.

7. Mr. Ramakumar submitted that the Panchayat, represented by him, should not be understood as having basic objections about the functioning of the industry in the Panchayat area, since direct and indirect employment to a number of persons was being offered. But the objection was about the impact, which was found to be real, interfering with the basic life pattern of the Grama Panchayat. Residents had worry about exploitation of resources and were concerned of pollution. If such apprehensions are appropriately remedied, there would not be any objection for the Panchayat to permit the company to carry on their activities, it is submitted.

8. Taking notice of the submissions, as above made, we feel that the matter could be gone into in some detail and the legal and factual contentions raised by the parties could be subjected to examination, as coming within the purview of this Court, exercising jurisdiction under Article 226 of the Constitution of India.

9. In fact, as could be seen from the proceedings on record before the Division Bench, taking notice of the observations of the learned Single Judge, the effort was to rest the findings on scientific data collected by expert bodies, as the issue very much revolved round balancing of ecological rhythm, the aspirations of the people in the locality, the duties and responsibilities, that were expected to be discharged by a Grama Panchayat, especially in the wake of decentralisation of powers and the predicament of an industrial unit, which had been cordially invited to invest substantial funds, ensuring them freedom of functioning. Therefore, advertence to a great extent would have to be made to the report prepared by the investigation team, constituted by order in W.A.No. 2125 of 2003 dated 19.12.2003 by the Division Bench, since this would have in the most proper way to assess and tackle the situation resulting from conflicting stand.

10. The provocation of the Panchayat for filing W.P.(C) No. 34292 of 2003 could be stated now. At one point of time, they had refused to renew the licence in favour of the company. The steps were challenged by way of a Writ Petition. Although a stay order had been issued, ultimately this Court refused to go into the merits of the case, and had suggested that since already an appeal had been filed before the Government, it would have been proper for the company to pursue the appeal. The Writ Petition was closed. Thereafter, on hearing the parties, the Government by order dated 13.10.2003 had held that the Panchayat was in error in issuing the orders, and a more detailed investigation should have been appropriate, and had directed consequential instructions in this direction. This order was the subject matter of challenge, at the instance of the local authority. The details of the sequences would be given later.

11. The concerned industrial unit is engaged in the business of manufacturing, storage, distribution and sale of aerated and carbonated non-alcoholic beverages, fruit beverages and Packaged Drinking Water. It is predominantly a water based industry. According to the company, they have set up units and factories in various parts of India, and one such factory is at Moolathara Village in Perumatty Grama Panchayat. The company claims that it is operating worldwide in over 195 countries and has conceived and introduced environmentally friendly policies. They are ever careful to carry out operations taking care to preserve and protect the environment. There was always frontline effort to comply with safety standards and were frugal while dealing with natural resources. Waste management was an area of special emphasis. Reference to the state-of-the-art Effluent Treatment Plant installed at a cost of over Rs. 3 crores is made. The water recovered from the process is recycled for internal use and it is a 'zero discharge' plant. Therefore, they were at a loss to find how they had come to the bad books of the Panchayat.

12. We may presently refer to the background of the disputes as well. After identifying a location and installing infrastructural facilities, in response to its application, the Panchayat had issued a licence to them on 27.1.2000 for running the factory, using electric power up to 2600 HP. They claim that they had obtained licence under the Factories Act and had obtained clearance from the Pollution Control Board. The licence issued by the statutory authorities were being renewed from year to year. The operations were smooth for a

while. But discordant notes were heard at a distance, but they had thought it prudent to take them in their stride, as basically their hands were clean.

13. An application for renewal of the licence, for the year 2003-04, had been duly presented with in prescribed time. But, by communication dated 9.4.2003, the company was informed that the Panchayat had decided not to renew the licence consequent to a resolution of the Panchayat dated 7.4.2003. The company was also required to show cause as to why the working licence should not be cancelled within 15 days of receipt of the notice dated 9.4.2003. It had been alleged that because of the working of the factory, exploitation of excess ground water occasioned and there is serious shortage of drinking water. Ecological problems also were seen. Further reason pointed out was that the Panchayat was also noticing that certain organisations were agitating over the functioning of the factory. At the auspices of early settlers, for over a year an agitation was going on. Panchayat had been constrained, according to them, therefore to pass a resolution, taking notice of these. The notice is Ext.P2 in W.P.(C) No. 34292/2003 and Ext.P1 is the copy of the resolution dated 7.4.2003.

14. A reply was filed by the company against the show cause notice on 30.4.2003, whereunder they refuted the allegations as made. They apprehended that it is a post-decisional notice and amounted to violation of the principles of natural justice. The allegations, according to them, were factually not sustainable and the agitations were stage managed and for extraneous reasons. Reference had been made to the grant of licence by the other statutory authorities. It had been pleaded that taking notice of the circumstance that it was catering to the social needs of the region, the Panchayat was requested to desist from the contemplated steps. A right of hearing had also been solicited. It had also been highlighted in Ext.P3 reply that:

"We have also done/are undertaking number of community development programmes for the people living in the locality in the field of education, health and drinking water supply. We are actively supporting the Perumatty Panchayat run Higher Secondary School at Kannimari by providing laboratory facility for the students."

15. A formal hearing had been offered, and thereafter, by Ext.P4 order dated 15.5.2003, the Panchayat had cancelled the licence granted to the company. It had been directed that the activities are to be stopped from 17.5.2003. It appears that the only recourse available viz., an appeal had been filed before the Government by the Company, challenging the steps contemplated by the Panchayat, seeking guidance and interference, as briefly referred to earlier.

16. In the meanwhile, an Original Petition also had been filed against Ext.P2 as O.P.No. 13513 of 2003. After hearing the parties, finding that a decision after hearing the explanation was yet to be passed, the Court had, by order dated 22.4.2003, directed the parties to maintain status quo till 16.5.2003 or till the Panchayat takes a decision, whichever is earlier. O.P.No. 13513 of 2003 came up for final orders on 16.5.2003 and this Court had directed that the company is to move the appropriate authority against the decision taken by the Panchayat. Such representation was to be filed within one week from the date of the judgment. A decision was to be taken thereon within one month; status quo was to be maintained till such time. The decision, referred to earlier, came to be passed in this context.

17. In due course, orders on the appeal came to be passed as Ext.P6 on 13.10.2003. The Government had gone to the essential details and found that the Panchayat had not conducted any scientific investigation or obtained benefit of any report from the competent agencies before taking the drastic stand of cancelling the licence already being enjoyed. The predominant issue of course centered round exploitation of water resources. According to the Government, the circumstances called for a detailed independent investigation and consequently had issued the following direction:

"In the above circumstances Government hereby order that the Perumatty Grama Panchayat will constitute a team 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 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."

A copy of the order is Ext.P6. W.P.(C) No. 34292 of 2003 came to be filed at the instance of the Panchayat challenging the above order of the Government. Observations and directions had been made and issued by the learned Judge, while disposing of the Original Petition. The validity thereof has presently come up for consideration in the two Writ Appeals (W.A.No. 2125 of 2003 and W.A.No. 215 of 2004), as both the parties had grievances in their respective areas of interest.

18. Before examining the rival contentions, it is essential that the facts leading to W.A.No. 1962 of 2003 also are catalogued. When the matter was being considered by the Government, as stated above, the Panchayat had issued a further show cause notice on 18.9.2003 pointing out that the company had installed bore-wells without permission. They also alleged that there were medical reports pointing out the presence of toxic substances in the effluent discharges. Company was directed to show cause as to why steps for closure should not be enforced. The notice was purported to be issued by virtue of powers conferred on the Panchayat under Section I66 of the Kerala Panchayat Raj Act. It had also been suggested that paddy fields in the possession of the company were converted into dry lands, which was unauthorised. According to the Panchayat, there was also reason to presume that the products of the company were likely to create health hazards.

19. Before us, it had been suggested that there was even an over play of the issue. Notice confided that on enquiries, the Panchayat gathered that though the company has shareholders in India, none of them has voting rights or any say in the decision making process by the company. All decisions are taken by the foreign nationals as regards the manufacturing of soft drinks, establishment of factories, disposal of waste etc., without any say to any one of the Indian Nationals. Therefore, the Panchayat claimed that it had reasons to believe that the very establishment of the factory in the country, and especially at Plachimada, is violative of various provisions of law regulating the conduct of business by multi-national companies. As the sale and consumption of the products like Coca-Cola have been banned within the Parliament premises in New Delhi and also by the State Legislative Assembly, Trivandrum on the ground that they contained poisonous substance, according to them, the proposal for closure was being mooted.

20. A Writ Petition had thereupon been filed by the company as W.P.(C) No. 31286 of 2003 challenging the orders, inter alia pointing out that the issue was already before the Government and the fresh notice showed the bias harboured. No interim orders had been granted, however. According to the Court, the Writ Petition was premature as there was only a show cause notice. The submission made, however, had been noticed that an explanation was being submitted. It was during this time that Ext.P6, referred to earlier, leading to W.P.(C) No. 34292 of 2003 came to be passed on 13.10.2003.

21. On the show cause notice, taking notice of the reply, a personal hearing had been offered. A stand had been taken by the company that the later developments in the form of Government Orders took cognizance of the disputes and there was no requirement for a separate or independent examination, or orders to be passed, as a course of conduct had been directed to followed. The Writ Petition itself was however disposed of, observing that the matter was being heard by the Panchayat on 17.11.2003 and the decision, if adverse, could be challenged. Against this judgment dated 14.11.2003, W.A.No. 1962 of 2003 had come to be filed, pointing out that the exercise of power by the Panchayat was unwarranted and showed the mala fides harboured by the local authority against them, and this Court should have considered the issues on merits.

22. But a separate examination of the rival contentions may not be necessary, as the issues are closely interlinked. The anxiety of the Company is that the rejection of the Writ Petition should not cause technical hurdles to them.

23. We may also advert to W.P.(C) No. 12600 of 2004, at this juncture. An application for licence for the year 2004-2005 had been submitted by the company along with a covering letter dated 17.2.2004 (Ext.P1 in the Writ Petition). However, referring to the resolution that had been passed on 5.3.2004, by Ext.P2 communication dated 11.3.2004, the company had been informed that their style of running of the industrial unit was not one which inspired confidence. To the regret of the Panchayat, they had noticed, according to them, the over extraction of ground water by installing six bore-wells without the permission of the Panchayat, and as a result thereof, there was drought resulting in shortage of drinking water. Additionally, there was a direction by the Government to stop the drawing of ground water by the company, and a Joint Parliamentary Committee had reported about the all round pollution brought about by the working of the factory and manufacturing products, which were hazardous to health. There were complaints about skin diseases, itching etc., as a result of the discharge of poisonous effluents from the factory, there was improper effluent treatment and the Pollution Control Board as per their letter dated 23.2.2004 was dissatisfied about the disposal of hazardous waste generated from the factory, and that the Panchayat had a duty to preserve water resources, soil protection etc. Because of the precarious availability of water, they were therefore practically convinced that considering the nature of magnitude of water requirement, it may not be proper for grant of the request.

24. Notwithstanding the above and although the Panchayat would have been justified in refusing renewal, the company was informed that as a special case, taking notice of the employment potential of persons in the local area, a renewal could be considered, if they were not to draw any ground water from the Panchayat area and were to carry on the industry by bringing water from else where. They were also to immediately stop discharge of waste to the satisfaction of the Panchayat and also to satisfy the Panchayat about the safety of the products, taking notice of the report of the Joint Parliamentary Committee. An undertaking was to be given forthwith, as otherwise the operations were to be completely closed down.

25. By Ext.P3, the company had invited the attention of the Panchayat to the unreasonableness of the advice. In effect, it was highlighted that they were flouting the orders of the Court as also Government by resorting to such a stand. But, referring to the resolution passed on 29.3.2004, by order dated 30th of March, 2004 (Ext.P5), the company was advised them not to resume their operation in the absence of a valid licence from the Panchayat pin pointing five reasons, viz.

1.) The application for renewal contains false statements and claims.

2) The Kerala State Pollution Control Board has refused to issue the authorisation under the Hazardous Wastes (Management and Handling) Rules with a result that the company has not provided satisfactory facility for the disposal of Hazardous Wastes generated in your company.

3) The Joint Parliamentary Committee report has clearly indicated that the products of the company contain harmful materials, which is injurious to public health.

4) The drawal of ground water by the company has affected the source of drinking water and water supply to the entire area, which is a matter of consideration and the Government had declared so and stopped the drawal of ground water until the Edavapathy (Monsoon).

5) The Panchayat is convinced that the reasons stated in its intimation dated 11.3.2004 have to be reiterated and the company has not satisfactorily explained any one of them either in the course of the hearing or in the written statement made by the company through the counsel.

This order had been challenged by way of an appeal. By order dated 1.4.2004, the Government had granted a stay on three conditions, namely that (i) The Government Order dated 21.2.2004 regarding the extraction of ground water (which pertained to prohibition of extraction of water during drought season) was to be strictly followed; (ii) the appellant was to strictly follow the conditions laid down by the Pollution Control Board; (iii) the directions in the judgment of the High Court in W.P.(C) No. 34292 of 2003 regarding the extraction of ground water subject to the directions/ orders in W.A.No. 2125 of 2003 was to be followed. In the Writ Petition, at the instance of the Panchayat, it is contended that an ex parte order ought not have been passed. Mr. Ramakumar submits that the practical solution now will be to direct the statutory Tribunal to hear and dispose of the pending appeal, after hearing all the parties, and the indiscretion of the Government in granting the interim order is not to be separately examined.

26. The issues are practically interlinked. Although certain additional grounds had been pointed out, justifying non-renewal of the licence, the basic issue is the assumption, which almost stands transformed to a conviction harboured by the Panchayat, that consumption of any amount of water for the industry would be detrimental to the general interests of the Panchayat and therefore it is to be discouraged. This was the reason which prompted the Panchayat to advise the company that renewal for the year 2003-04 also was not being favourably considered. However, such an attitude adopted did not get full support from this Court, when we examine the judgment in W.P.(C) No. 34292 of 2003, although the Court had been persuaded to feel towards a necessity for a study and imposing of restrictions in the enjoyment of nature's bounty. The Government had advised the Panchayat for the necessity and requirement of expert opinion, and it had to come from a competent body.

27. By judgment in W.P.(C) No. 34292/03, the directions were streamlined. In the present proceedings, this Court had felt the necessity for presence of adequate materials by entrusting the investigation to an expert body, practically concurring with the Government's view. After hearing the parties concerned, by order dated 19.12.2003, it had been ordered that:

"for a proper adjudication of this case, more scientific data are required. In this view of the matter, prima facie we are of the view that the Government was right in directing the Perumatty Grama Panchayat to constitute a team of experts to conduct a detailed investigation into the allegations levelled against the company and its products".

28. Noticing the suggestions made at the bar, the learned Judges, at the early stage of the hearing, opined that "the investigation should be entrusted with the Centre for Water Resources Department and Management, Kunnamangalam, Kozhikode, which is part of the Kerala State Council for Science & Technology and Environment". The Centre was thereby appointed for conducting an investigation as to whether the allegation viz., that working of the factory at Moolathara Village had resulted in shortage and scarcity of drinking water in the neighbouring areas due to the over-exploitation of ground water for the use of the factory. The Experts' body had been named by the Court and expenses were directed to be defrayed by the company. The project report was required to be filed by 7.1.2004, so that further directions could be issued.

29. Monitoring the progress, follow up orders had been issued from time to time. It cannot be ignored that such data was being authoritatively collected so as to subject the contention of the Panchayat for an examination as to the alleged existence of exploitation, and if so, for curbing the activities and for prescribing parameters, as might be required, so as to ensure justice as between the parties. The role played by the Court had never been objected by any of the participants to the proceedings. The objective had been made known to all. Now that a report has come, the Court is not to shirk responsibility, by refusing to look into that. Also we feel that in view of the vital nature of the issue, the matter has to be dealt with, befitting with the importance it deserves.

30. A preliminary report, followed by a final report, have come on record. Formal objection has been filed by the Government on 1.4.2005, in the form of an affidavit, filed on behalf of the second respondent. The

Panchayat has also filed an objection, and had produced along with it the materials relied on by them as about the interim report, reserving leave to file further statements/objections in due course. Before adverting to them, it is essential that the criticism and contentions raised by the parties in Writ Appeals No. 2125/03 and 215/04 are examined.

31. Judgment in W.P.(C) No. 34292 of 2003 dealt with the issues in some detail, and paragraph 8 thereof could be extracted as follows:

"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 2nd respondent answered those allegations. The Government, while disposing of the matter, ordered an investigation and a decision on these matters also. While exercising the licensing jurisdiction, the Panchayat 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 in consultation with expert bodies under Section 233A of 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 need be considered by this Court in this case."

The Court therefore had held that while exercising the licensing jurisdiction, the Panchayat is not competent to go into the quality of the beverages produced and it is for other authorities to look into such aspects. As notice was issued only on the ground of excessive exploitation, the jurisdiction or right to cancel the licence could have been exercised by the Panchayat only on the basis of that reason. The approach is unexceptionable.

32. Mr. Vaidyanathan, senior counsel submits that if that be the case, the Court was not justified to go into other aspects. As highlighted in the appeal memorandum, according to him, most of such points were never even agitated. Counsel referred to paragraph 12 of the judgment also, which is in the following terms:

"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 unauthorised. 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."

But, according to him, the learned Judge had faltered steps, when he observed that:

"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".

The approach and enquiry, which began from this premises, according to the counsel, has adversely affected the thought process leading to the rest of the directions, which according to him plainly defied logic.

33. Exploitation, if carried out, has to be established, before accusing one of the indiscretion. He suggests that the Court was not examining a hypothetical question. A finding was yet to be arrived, and as it has turned out, it was one really begging the issue. Counsel points out that it is not as if a person is not the owner of water beneath his field, be it well water or ground water. The reasoning supplied for entering a finding to the contrary, according to him, was feeble and not based on any legally accepted principles. Excess exploitation is still more a secondary issue.

34. We may point out that precise information was not forthcoming as to the meaning of the term "ground water". The Additional Advocate General, on being asked, explained that ground water was generally water which was available, possibly below hundreds of meters below ground level and mostly locked among rocks in the upper crest regions of the earth. But, he submits that the legislation of the Government, as also dictionary meaning, refers to "ground water" as any water below the surface of the earth, be it well water or water in a pond or water which could be brought up by pumping through the bore-well. The essential difference as between the water sources have not been attempted to be noticed.

35. We have to assume that a person has the right to extract water from his property, unless it is prohibited by a statute. Extraction thereof cannot be illegal. We do not find justification for upholding the finding of the learned Judge that extraction of ground water is illegal. It is definitely not something like digging out a tueasure-trove. We cannot endorse the finding that the company has no legal right to extract this 'wealth'. If such restriction is to apply to a legal person, it may have to apply to a natural person as well. Abstract principles cannot be the basis for the Court to deny basic rights, unless they are curbed by valid legislation. Even reference to mandatory function, referred to in the third schedule of the Panchayat Raj Act, namely "Maintenance of traditional drinking water sources" could not have been envisaged as preventing an owner of a well from extracting water therefrom, as he wishes. The Panchayat had no ownership about such private water source, in effect denying the proprietory rights of the occupier and the proposition of law laid down by the learned Judge is too wide, for unqualified acceptance.

36. In fact, we find that the learned Single Judge was himself in two minds about an absolute proposition that might have resulted. Observations in paragraph 14 of the judgment indicated that what was objectionable was a "right to claim a huge share of it" alone. Further, it has been observed in paragraph 15 that "like every other land owner, the second 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", but however, the right had been given to the Panchayat to fix the quantity permitted to be used. No reason is however given as to why agriculture has a priority than an industrial activity. Agricultural needs for water differ from crops to crops. Therefore, the observation in sum total would have resulted in a chaotic situation.

37. It should have been found that the Panchayat had no machinery to assess requirement for water to a property owner other than to adopt the rule of thump. Senior Counsel points out that after making these observations, again in the operative portion of the judgment, practically a contrary direction had been issued which enabled the Panchayat to prevent the company from drawing any ground water after a period of one month. Even this period was to enable the company to find out alternate sources of water. The criticism is that the real issue has escaped notice of the learned Judge, and there was no justification therefore to deny the rightful claims, even recognised by the Government.

38. We find that the findings are not precise and the follow up course suggested may not be practical. After holding that there is right for using a reasonable amount of water, the Court could not have held that the Panchayat is obliged to renew the licence and should not interfere with the functioning of the company, only if the Company is not extracting ground water and is depending for its water needs from other sources. The absolute prohibition was neither called for, nor legal. A further direction had been made, whereunder the Panchayat was to get the assistance of the Ground Water Department for assessing the quantity of water that could be drawn by a land owner, who had 34 acres of land for his domestic and agricultural purposes. But it is not suggested as to what earthly purpose this exercise is to benefit anybody. Use of any amount of water had been prohibited and the earlier directions stood as a ban for use of water for the manufacturing work in the factory. The criticism of the appellant appears to be correct, as in spite of the suggested examination or exercise directed to be carried out, follow up directions had not forthcome, as to whether the ground water could have been utilised at least to a limited extent.

39. Mr. Vaidyanathan also points out that the condition prescribed by the learned Single Judge that the factory may be worked by bringing water from other sources, though established in Perumatty Grama Panchayat,

would have been plainly unworkable. Not only the right to use its own water is prohibited, but impossible conditions are prescribed, which can lead only to one result viz., that the establishment is to be closed down. The benefit of the earlier observations, when the Government order had been upheld is thereby lost to the company. It is argued that if the principle deducible from the judgment could be understood in plain terms, an owner of a land cannot draw water from his properties or use even a single drop thereof. It could be visualised that in all possibility, any other local authority would have objected to drawing of water for being utilised for an industry distantly situated. The restrictions would have applied to them as well, as an individual was not entitled to draw water without the permission of authorities. The net result will be that bringing water from any other sources becomes illegal and unauthorised.

40. There is basis in such submissions, as it exposes presence of rigid and unworkable propositions. We are reconvinced that as suggested by the Division Bench, at the early phase of hearing, the workable solution was to get sufficient data from authentic sources and try to resolve the issues with a sense of proportion and balancing. A water based industry, with a huge investment has to receive water, to quench its thirst without inconveniencing others. We also do not approve the observation made in paragraph 13 of the judgment that "even assuming the experts opine that the present level of consumption by the second respondent is harmless, the same should not be permitted". The reasons given in the judgment do not appeal to us as reasonable. Also the above, essentially does not go hand in hand with the finding in the judgment, in paragraph 12 that:

"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 unauthorised."

as well as the observation:

"so, the Government's order to the extent it interfered with the closure of the unit has to be upheld"

41. Coming to Writ Appeal No. 215 of 2004, we notice that the findings just above extracted have not been subjected to challenge in the Writ Appeal of the Panchayat. The grounds taken were that the Judge erred in law in holding that the Panchayat cannot cancel the licence if there is a health hazard in the continuance of an industrial unit within the area of the Panchayat (Ground A); and that the "observations of the learned Judge are contrary to the mandate of the Constitution enjoying on the Panchayat to attend to measures of protection of health and well being of its residents (Ground-B). Ground-C was that the learned Judge erred in holding that the cancellation of the licence is not warranted in the case. Ground-D also was in the following terms:

"The learned Judge ought to have held that if an industrial unit poses health hazards or causes pollution all round it is within the powers of the Panchayat to exercise the power of licensing and seeking the cancellation of the licence already granted."

But these grounds have been taken totally forgetting the submissions made by the Panchayat, while the matter was being heard by the learned Single Judge. There was no categoric challenge about the finding in paragraph 8 of the judgment that "while exercising the licensing jurisdiction, the Panchayat is not competent to go into the quality of the beverages produced and it is for other appropriate authorities to look into such allegations." As a matter of fact, the learned Judge had recorded that "the Panchayat fairly submitted that the validity of its decision and that of the Government on this point alone need be considered by this Court in this case". This we find concerned with the issue of excessive exploitation alone.

42. Therefore, the appeal filed by the Panchayat poses no challenge on the quoted findings of the learned Judge. On the other hand, the Court has held in favour of the Company that the Panchayat had been arbitrary in imposing its decision. This appeal therefore has no merit. Really we are again being reminded of the necessity of examining the report of the Expert Committee, so as to give a quietus to the issues.

43. We hold that ordinarily a person has right to draw water, in reasonable limits, without waiting for permission from the Panchayat and the Government. This alone could be the rule, and the restriction, an exception. The reliance placed by the learned Judge in Kamal Nath's case (M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388) is not sufficient to dislodge the claim. The observation in paragraph 13 that the ground water under the land of the respondent does not belong to it may not be a correct proposition in law. In the present case, we also notice the statement that the Company has registered themselves as required under the Kerala Ground Water (Control and Regulation) Act, 2002, which came into force on 11.12.2003.

44. Now we may enter the next phase of the adjudication. The final report of the Expert Committee is comprehensive, and it could be gathered therefrom that a scientific investigation on the ground water potential of the area and the shortage and scarcity of drinking water in the nearby areas due to the current level of water extraction by the company had been made the subject matter of enquiry/investigation. The Committee found that the rainfall data recorded in respect of the areas revealed of a shortfall in showers for the years 2002-03 and 2003-04, as much lesser than the mean value. This deficiency, according to the Committee, could be considered as the most significant factor that has contributed to the scarcity of water experienced in the study area. The Committee has recorded the opinion that the unregulated withdrawal of ground water from the wells within the Coca-Cola factory complex and also outside, even during such a deficit period had aggravated the scarcity situation. The annual average rainfall for the past ten years had been taken notice, and up to the year 2004. During the year 2004, as could be seen from the statements, there was a better amount of rainfall (1690 mm at Meenkara). For the purpose of calculation, the lower value of 1412mm at Chitturpuzha Project office has been taken for assessing the ground water potential of the area. The data available for the macro area of Chittur Block had been considered and the Committee had come to the conclusion that the committed annual ground water draft that should be reserved to meet the water requirements of both domestic and irrigation sectors in Chittur Block till 2025 AD could be estimated as 62.5 Million Cubic Meters (MCM), leaving an annual balance of about 4.2 MCM of ground water resources for meeting other uses of water, including industrial purposes. The annual ground water required by the company, at the average rate of 5 lakh litres per day, would have come at 0.1825 MCM, which would be less than 5% of the total available 4.2 MCM.

45. As revealed in the report, Committee had also studied the data pertaining to ground water resource of Plachimada watershed. It found that what could be used by the company was 4.97% of the annual available ground water resource of 3.67 MCM which would be there in the watershed. The recommendation appears to be that permissible ground water withdrawal could be 5 lakh litres per day, if for relevant year, average rainfall was available. If it was less by 10%, exploitation is to be reduced to 4 lakh litres per day. If the monsoon is less by 20% or 30%, restriction should have been made to 3 lakh litres and 2 lakh litres respectively. In a case of a year where there was 30% lesser rainfall than average, total ban of use has to be imposed.

46. The Panchayat had not filed any detailed objection about the report, and continued to rely on the objections made against the interim report. Thus, it has not been possible to know their stand about the presentation, including the watershed approach for arriving at water availability status for various purposes, which alone appears to have been the addition (See Minutes dated 20.1.2005 - Appendix IF). Nothing was specifically pointed out for discarding the report or the recommendations. Although an affidavit is filed on behalf of the second respondent on 1.4.2005, it has come out as a very feeble effort, and an effort, which is difficult to be accepted as of any consequence. A "Geological Assistant" of the Ground Water Department is the signatory to the affidavit. He submits that on going through the report, no principle is found out and reason for allowing withdrawal of such a huge quantity of water is also not discernible from the report. Attempt is to import and rely on statistics in the form of Ext.R2(a) (Yearly Rainfall at Chulliar Dam) and Ext.R2(c) (Monthly Rainfall at Meenkara Dam) for the year 2004. It is to be noticed that Chulliar Dam is situated more than 15 kilometers away. Also the signatory has overlooked that the Expert Committee had taken the lowest figures of rainfall as mean value recorded by relevant rain gauges, which was lesser than for the latest year. The mechanism of the projections suggested is not attempted to be challenged. We are also constrained to observe that it was not prudent for a subordinate officer to swear an affidavit controverting the findings of the

Expert Committee, especially since his superior officer (Hydrogeologist, Ground Water Department) was one of the members of the Expert Committee. The opinion of the Officer, who is a Geological Assistant, can only be considered as pedestrian. Evidently, the attempt of the Government was to escape from a possible pique of indiscretion that otherwise might have been suggested. Perhaps it is filed purely for the purpose of records; if not to appease the gallery. We find that the report of the Committee is fair, it appears to be authentic, based on data collected, mature and therefore acceptable.

47. Before coming to the final phase of the case, we may also advert to the relevance of W.P.(C) No. 12600 of 2004. Although orders were passed by the Government on 13.10.2003, as per the directions of this Court in O.P.No. 13513 of 2003, certain fresh issues were precipitated, especially pointing out the health hazard and the application for licence for the year 2004-05 had been rejected. Because of the binding judgment in W.P.(C) No. 34292 of 2003 dated 16.12.2003, wherein the Panchayat had suffered an order that "while exercising the licensing jurisdiction, the Panchayat is not competent to go into the quality of the beverages produced and it was for the other appropriate authorities to look into such allegations", we feel that such arguments are incapable of being reagitated, as the Panchayat is bound by the observations, as such findings have never been challenged. Also the proceedings were of not good taste, as the Government Order dated 13.10.2003 bound the discretion of the Panchayat, which had only been partially modifiedby the judgment in W.P.(C) No. 34292 of 2003. All steps were to be kept in abeyance, and they had a duty to assess the magnitude of alleged exploitation before any further adventure. Of course, it could be seen that additional circumstances were arrayed, but even prima facie, such allegations appear to be of no substance.

48. When we go through the exhibits presented in the Writ Petition, we find that the Panchayat has however, in their letter dated 11.3.2004, offered to renew the licence on satisfaction of three conditions. They are: (1) The company should not draw or cause to be drawn any ground water from anywhere in Perumatty Grama Panchayat, including the open well, and they may bring water from outside; (2) The company is to immediately stop discharge of waste, including dangerous and offensive contents, which are serious health hazards and attend to waste management; and (3) the products are to be ensured as not having any poisonous chemical substance in them, as has been found by the Joint Parliamentary Committee. Therefore, it was more of an ego clash, and we do not wish to go to other details.

49. As regards the first objection, we have already held that such a restriction will be unwarranted. It always will be permissible for an occupier to draw water out of his holding. The permissible restrictions, in public interest, can only be to compel him to ensure that by his conduct he does not bring about a drought or any imbalance in the watertable. The interim report of the Expert Committee itself indicate (vide paragraph 4.3) that although the pumping of ground water was stopped during March, 2004 the trend of water level falling in the observation wells in the area continued. The suggestion and condition to bring water from outside the Panchayat area to run an industry housed there is plainly unreasonable and we cannot approve such a condition for curbing the normal activities.

50. In respect of the objection about pollution, in the course of hearing, reference is made to a letter addressed to the Chairman of the Kerala State Pollution Control Board pointing out that every possibility of any waste product contamination has been plugged up. May be the Pollution Control Board has no objection in permitting operation. As for the third objection viz., report from the Joint Parliamentary Committee, we had occasion to peruse through the documents as produced by the Panchayat. There is no reference to any sample taken from the Factory at Plachimada and therefore the objection as presented does not appear to be valid or even sustainable. The Panchayat might not be possessing sophisticated equipments for analysing the contents of the manufactured products, and although as Mr. Ramakumar points out that the Schedule to the Panchayat Raj Act is specific about the mandatory duties of the local body, that by itself will not justify them to engage in a pursuit for which they are illequipped. The anxiety of the Panchayat of course is understandable, but blind faith may lead to perpetration of arbitrariness, as point of view of third parties do not get noticed.

51. An overall assessment of the situation, we feel, may not be out of place. Water travels constantly through water channels beneath the ground. These are generally referred to as water sources and reserves, and replenishment of ordinary wells is brought about naturally through this system. But, water in immeasurable quantities which reach substantially lower levels by percolation processes round the year are locked in, for ages, between rock formations, and it could be tamed out only by mechanical devices, e.g., through bore-wells. Presence of water could be compared to that of petroleum deposits underground, although there is no regular replenishment for the latter. Often kilometers below ground level, both remain eternally trapped. It is not uncommon that large deposits of petroleum are found far below the ocean floor. The ground water similarly are trapped deep below the ground. Such deposits are not subject to evaporation, and laws of gravity do not permit it ever to come up of its own. It is, therefore, safe to assume that bore-wells are used to draw such water alone and by working of such pumps, water might be drawn from areas extending to several kilometers. Drying up of ordinary wells, tanks etc., in summer season is not a phenomenon specific to Plachimada. As could be gatherable from the report, the shortage in rainfall substantially is a contributory factor thereto. By natural seepage during rainy seasons, on its own, water travels downwards to reach low levels. The Committee has explained the above as a process of recharging to the ground water, which is likely to replace the exploited amounts. This appears to be the basis of the future projections made by them. The very fact that the wells were drying up in the summer at Plachimada, notwithstanding stoppage of exploitation after March 2004, and when the company's bore-wells were kept idle, leads to the assumption that the apprehensions and allegations were not true to the factual situation.

52. We, therefore, come to the conclusion that the Panchayat was not justified in resorting to steps, whereby renewal of licence for the Hindustan Coca-Cola Beverages Private Limited was rejected well before a scientific assessment was made. The Panchayat had also no legal authority to cancel the licence for functioning the unit in the Panchayat area for any of the reasons pointed out, at different occasions. The Panchayat is therefore directed to consider the application for renewal of the licence granted to the Company, for the coming year, or any block years, if such application is filed within two weeks from today. The Company will have the obligation to appraise the Panchayat that they possess licences issued under the Factories Act and clearance received from the Pollution Control Board. Within one week of such presentation, if the above two conditions are satisfied, the Licensing Authority of the Panchayat is directed to grant the licence and it may not be within its jurisdiction to enquire about the details of the machineries installed, including bore-wells, as such matters predominantly are to be within the jurisdiction of enforcement officers under the Factories Act. After grant of licence, it may be permissible for the Panchayat for making inspections, so as to see whether further licence fee would be payable.

53. For the year 2005-06, taking notice of the average rainfall, that had been there in the locality, the Company will be entitled to draw ground water, not exceeding 5 lakh of litres per day, without any right for accumulation in case of non-user per day. The Panchayat will be entitled to carry out inspection, as coming within its jurisdiction, including the limits of use of water per day, in a manner at their discretion, of course without unduly interfering or inconveniencing the company. The Company should satisfy the Panchayat about the intake of water per day, keeping correct up-to-date log books and records. The renewal of licence for the coming years should also be on the basis of the observations made herein, as might be applicable with required changes, so as to suit the occasion.

54. Although third parties had got themselves impleaded, we had only opportunity to hear Mr. Chithambaresh, representing the cause of workmen. They were vociferous in contending that the Panchayat had been unnecessary twisting the arms of the company for no useful purpose, misdirecting itself. There were no representations from any others, who posed to represent the general public. Nevertheless, we feel that taking notice of the commitment to which reference and claim is made by the company, we have to direct that the company should actively involve in the community development programs for the people residing in the locality especially in the matter of health and drinking water supply, at the supervision of the Panchayat. We may refer to the stand taken by them, as could be seen from Ext.P3, produced in W.P.(C) No. 34292 of 2003, which calls for such directions. Since the early settlers and general public are apprehensive about the shortage

of drinking water, this becomes an essential duty of the company. The factory is drawing water resources from the Plachimada watershed, and also perhaps from other regions of Chittur Taluk through suction. Therefore, a reasonable amount of the water so drawn are to be utilised for benefit of general public, and as directed by the Panchayat from time to time. This work of water supply is to be undertaken, and commenced before 30th of June 2005. The restriction imposed for its own consumption will not be applicable when water is drawn for this additional requirement.

55. In view of our observations and findings, we hold that the appeal proceedings before the statutory Tribunal, filed by the Company under Section 276 of the Panchayat Raj Act, is to be closed as having become infruetuous, and a formal request is to be made by the Company in that regard, on the authority of this judgment. As far as the refund of deposit of cash made, in view of the order of this Court dated 7.1.2004, on application being filed, the Registry is to place the matter before the Court, and obtain further orders.

56. The three Writ Appeals and the Writ Petition are disposed of as above. The directions and observations of the learned Single Judge in the judgment in W.P.(C) No. 34292 of 2003 will be deemed as modified in consonance with the directions, as above made.

On pronouncement of the judgment in open Court, the learned counsel for the Panchayat submits that one week's time granted for consideration of the application will be too short a period and at least two weeks might be required. Although Sri. Shaffique, appearing for the respondent-Company, submits that the time granted is adequate, taking notice of the circumstances, the time granted as one week will stand modified as two weeks.