



Groundwater Law and Water Extracting Industries: the Plachimada Case and its Implications

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Background

- Water extracting industries
 - Depletion, pollution
 - Conflicts
- Plachimada – facts
 - water stress area
 - Coca-Cola plant was commissioned in 2000
 - Public protests began within two years
 - Depletion of GW (drinking and agriculture)
 - Pollution of GW
 - Solid waste issue
 - Closure of Coca Cola
 - KPCB order in 2004 – Hazardous waste issue



Contd.

- Plachimada – one among many.....
 - Pepsi case (Kerala)
 - Kala Dhera (Rajasthan)
 - Mehdiganj (Uttar Pradesh)



The Legal Dispute

- *Perumatty Grama Panchayat v. Coca Cola*
 - State's power to regulate GW use v. right of landowner to use GW
 - Local government's power under PRI laws
 - Landowner's right as part of property right
- Single judge, Kerala High Court, 2003
 - Panchayat has no power to issue closure order
 - But Panchayat can regulate GW use
 - Public Trust Doctrine (*Kamalnath case*, 1997, SC)



Contd.

- Division Bench, Kerala High Court, 2005
 - Landowner’s right overrides abstract principles
 - “*Panchayat had no ownership over such private water resources and in effect denying the proprietary rights of the occupier...is too wide for unqualified acceptance.”*
 - “*...ordinarily a person has a 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 is an exception.”*



Legal implications

- Non-applicability of PTD in groundwater context
- GW law
 - Common law rule - land-based GW right
 - Facilitating uncontrolled exploitation
 - Tacit approval of land-based GW right
- Diluting power of panchayats
 - Strengthening investment regime
 - *Pepsi case* (Kerala High Court, 2008)
- The human right to water
 - DW as priority
 - State obligation to prevent third parties



Law's contradictions

- Unpredictable judiciary
 - Property rights prevails over fundamental rights!
- Cunning nature of law
 - Centralisation prevails over decentralisation!
 - Economic development prevails over fundamental rights!
- Forthcoming Supreme Court decision ??