

**THE KUMAUN AND GARHWAL WATER (COLLECTION
RETENTION AND DISTRIBUTION) ACT, 1975¹**
[U. P. ACT NO. XLVI OF 1975]

[Passed in Hindi by the Uttar Pradesh Legislative Assembly on August 5, 1975 and by the Uttar Pradesh Legislative Council August 7, 1975.]

Received the assent of the President on September 7, 1975 under Article 201 of 'the Constitution of India', and was published in the Uttar Pradesh Gazette, Extraordinary, dated September, 1975.]

**AN
ACT**

to regulate and control in the public interest the water sources in the hill-tracts of the Kumaun and Garhwal Divisions order to ensure a rational distribution of water for the Purposes of human and animal consumption, irrigation an industrial development.

IT IS HEREBY enacted in the Twenty-sixth Year of the Republic of India as follows : --

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| Short title and extent | 1. (1) This Act may be called the Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975.

(2) It extends to the whole of Kumaun and Garhwal Divisions except the Kashipur, Bhabar, Rudrapur and Khatima sub-division in the district of Nainital and Kotdwara Bhabar area of Garhwal Divisions. |
| Definitions | 2. In this Act, unless the context otherwise requires -

(a) "protected area" means an area demarcated as such under clause (b) of sub-section (1) of section 4;

(b) "prescribed" means prescribed by this Act or by rules made under this Act;

(c) "water" means water of rivers, streams flowing in natural channels, natural lakes and ponds or reservoirs includes rain water;

(d) "water sources" means natural oozing out of water from underground streams, channels and rivers, lakes, ponds reservoirs and other collections of still water in including rain water;

(e) "water channels" means a channel used for the communication of water for the purposes of human or animal consumption, irrigation or industry, including the running of water mills. |
| Abolition of the right of the user of water | 3. On and from the fifteenth day of July, 1975, all the existing rights (whether customary or otherwise and whether vested in any individual or in village communities) of use of water, if any, in the areas to which this Act extends, shall stand abolished. |

1. For Statement of Objects and Reasons, see U. P. Gazette Extraordinary, August 1, 1975.

[The Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975] [Section 4-5]

Power of State Government to regulate and control water and water resources

4. (1) The State Government shall have the power-
- (a) to regulate and control, by rules made under this Act, the collection, retention and distribution of water and water sources;
 - (b) subject to the rules, if any, made in this behalf under this Act, to demarcate areas for protection of water sources and to declare the same as protected area ; and
 - (c) to amend or cancel any declaration made under clause (b).
- (2) The State Government may, while exercising powers under sub-section (1), give preference to the persons or village communities whose rights in respect of water have been abolished under section 3.

Power of the State Government to construct water channels etc.

5. (1) The State Government shall have the power to construct any water-channel, tank or reservoir, or install any pumping machine or lay out any pipeline in, upon or through the land belonging to or held by any person, but it shall not thereby be deemed to have acquired any right in such land other than the right of user for the said purposes.
- (2) In exercise of the powers under sub-section (1), the State Government shall cause as little damage to the land as possible, and where during the course of any activity referred to in that sub-section, the whole or part of the land is rendered unfit for the purpose for which it was being used immediately before the commencement of such activity, the persons interested in the land shall be entitled to compensation in accordance with the provisions of the Land Acquisition, Act, 1894 :
- Provided that no compensation shall be payable in respect of mere laying out for passage of any pipeline in or through the land belonging to any person where such pipeline is laid not less than two feet below the surface of the land :
- Provided further that nothing in this sub-section shall be construed to prevent any activity referred to in sub-section (1) being started or continued until payment of compensation under this sub-section.
- (3) The amount of compensation referred to in sub-section (2) shall, be determined by the Sub-Divisional Officer.
- (4) Any party aggrieved by the order of the Sub-Divisional Officer determining compensation under sub-section (3) may, with in thirty days of the date of such order, prefer an appeal to the District judge and the District Judge may either dispose of it himself or assign it for disposal to any Additional District Judge under his administrative control and may recall it from any such officer, or transfer it to any such officer, and the order passed on such appeal shall be final.
- (5) Notwithstanding anything contained in sub-section (4), the compensation determined under sub-section (3) by the Sub-Divisional Officer shall be paid as soon as may be without waiting for the result for such appeal.

[The Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975] [Section 6-10]

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| Restrictions on construction etc. | 6. | No person not being a Jal Sansthan constituted under the Uttar Pradesh Water Supply and Sewerage Ordinance, 1975, shall construct or cause to be constructed any water channel, tank, reservoir or water-mill, or install or cause to be installed any pumping machine, or lay out or cause to be laid out any pipe line, intended for taking the supply of water from any water sources, without prior permission in writing of the Sub-Divisional Officer. |
| Prohibition of against cutting trees etc. in catchment area | 7. | No person not being a Jal Sansthan constituted under the Uttar Pradesh Water Supply and Sewerage Ordinance, 1975, shall cut any tree, bushes, shrubs, or burn dried grass in any protected area without prior permission in writing of the Sub-Divisional Officer :

Provided that in respect of any nap land comprised in or protected area, this section shall have effect as if references to bushes and shrubs were omitted. |
| Grant of permission | 8. | (1) Any person may apply to the Sub-Divisional Officer for permission to construct, install or layout any of the things mentioned in section 6 or to do an act mentioned in section 7.

(2) On receipt of an application under sub-section (1), the Sub-Divisional Officer shall make an enquiry and may in the public interest grant or refuse to grant the permission applied for, and where the permission is so granted, the officer may impose such conditions as it considers just and proper.

(3) The order of the Sub-Divisional Officer under sub-section (2) shall, subject to the result of an appeal under section 11, be final. |
| Revocation of permission | 9. | (1) Any permission granted under section 8 or any permission granted under the Kumaun Water Rules, 1930 and continuing in force by virtue of section 18 may be revoked by the Sub-Divisional Officer, if the person concerned commits a breach of any of conditions governing such permission or otherwise contravenes any provision of this Act or the rules made thereunder.

(2) No order under sub-section (1) shall be made by the Sub-Divisional Officer, unless the person concerned has been given an opportunity of being heard.

(3) Every order of the Sub-Divisional Officer under sub-section (1) shall, subject to the result of an appeal under section 11, be final. |
| Removal of un-authorized Act | 10. | (1) If any water-channel, tank, reservoir or water-mill has been or is being constructed or any pumping machine has been or is being installed, or pipeline has been or is being laid in contravention of the provisions of this Act the Sub-Divisional Officer may, after notice to the person concerned and after giving him an opportunity of being heard, by order require him to remove or stop the same or as the case may be to restore the land to its original condition within a period specified in the order.

(2) If the order made under sub-section (1) is not complied with by the person to whom it is directed within the specified period, the Sub-Divisional Officer may get any work done in accordance with that order at the cost of that person and may also use or cause to be used such force as may be necessary, for securing compliance with such order. |

[The Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975] [Section 11-13]

- (3) Every order of the Sub-Divisional Officer under sub-section (1) or sub-section (2) shall, subject to the result of an appeal under sub-section 11 be final.
- (4) Any cost incurred under sub-section (2) shall on a certificate of the sub-Divisional Officer be recoverable as arrears of land revenue from the person mentioned in the certificate.
- Appeals 11. Any person aggrieved by an order of the sub-Divisional Officer under section 8 or section 9 or section 10 may file an appeal in the manner prescribed, before the Collector within thirty days of the date of such order, and the order of the Collector on appeal shall be final.
- Power of various authorities and procedure to be followed by them 12. (1) The Sub-Divisional Officer, the Collector and the District judge shall for the purposes of holding any inquiry or determining any dispute or hearing any appeal under this Act, have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely-
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) receiving evidence on affidavits;
 - (c) making any local inspection, or issuing commissions for the examination of witness or local investigation;
 - (d) requiring the discovery and production of documents;
 - (e) awarding, subject to any rules made in that behalf, costs or special costs to any party or requiring security for cost from any party;
 - (f) recording a lawful agreement, compromise and making an order in accordance therewith;
 - (g) dismissing an application or appeal for default and to restore it for sufficient cause;
 - (h) deciding a case *ex parte* and to set aside, for sufficient cause, an order passed *ex parte*;
 - (i) allowing amendments of any application, objection or memorandum of appeal;
 - (j) issuing temporary injunction, both prohibitory as well as mandatory;
 - (k) substituting legal representatives in case of the death of any party;
 - (l) any other matter which may be prescribed.
- (2) Without prejudice to the provision of sub-section (1), the Sub-Divisional Officer of the Collector, or the District Judge as the case may be, shall have power to make any order for the ends of justice or to prevent the abuse of process of its or his authority under this Act.
- Application of Limitation Act, 1963 13. The provisions of sections 4, 5 and 12 of the Limitation Act, 1963, in so far as may be applicable shall apply to all proceedings under this Act.

[The Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975] [Section 14-18]

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| Savings in respect of rights and powers of Municipal Boards and Notified Area Committee | 14. | <p>Within the limits of a Municipality or Notified Area as defined in the U. P. Municipalities Act, 1916, or a town area as defined in the U. P. Town Areas Act, 1914 the provisions of this Act shall have effect subject to the following modifications, namely-</p> <p>(a) the provisions of sections 6, 8 and 9 shall have effect as if for the words "Sub-Divisional Officer" the Municipal Board, the Notified Area Committee or the Town Area Committee, as the case may be, or an officer authorised by it in that behalf were substituted;</p> <p>(b) section 11 shall have effect as if the words "section 8 or section 9 or" were omitted;</p> <p>(c) any water sources or water channels, whether situated within the limits of the municipality, notified area or town area or outside, in the possession of the Municipal Board or Notified Area Committee or Town Area Committee immediately before the commencement of this Act shall not be affected by any provision of this Act;</p> <p>(d) if after the commencement of this Act, the Municipal Board, the Notified Area Committee, the Lower Area Committee requires any new water sources or any new water channels outside the limits of the municipality, or notified area or town area it may take supply of water from such water source or construct or cause to be constructed any such water channel, tank or reservoir or install or cause to be installed any pumping machine or layout or cause to be laid out any pipe line outside such limits only with the prior permission in writing of the State Government.</p> |
| Prohibition of use of injurious substances in water sources | 15. | No person shall use in any water source chemicals, explosives or any other substance which may cause injury to or endanger any fish or other aquatic organisms. |
| Power of exemptions | 16. | The State Government may by notification in the <i>Gazette</i> grant, subject to such conditions, if any, as may be specified, exemptions from all or any of the provisions of this Act in respect of such persons or class of persons or in respect of such class of ponds or reservoirs or other collections of still water (including rain water) as may be specified, and the State Government may by a subsequent notification withdraw or modify any such exemption. |
| Power to delegate | 17. | The State Government may by notification in the <i>Gazette</i> delegate, subject to such conditions, if any, as it may specify, any of its powers (except the power under section 21) to the Nigam or to a Jal Sansthan constituted under the Uttar Pradesh Water Supply and Sewerage Ordinance, 1975, or to the Uttar Pradesh Parvatiya Vikas Nigam Limited, a company registered under the Companies Act, 1956. |
| Penalties | 18. (1) | <p>Whoever, without proper authority and voluntarily does any of the following acts, namely- ,</p> <p>(a) damages, alters, obstructs or interferes with or increases or diminishes the supply of water in or the flow of water from, through, over or under any water source;</p> |

[The Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975] [Section 19-20]

(b) interferes with or alters the flow of water from, through, over or under any water channel, tank or reservoir or any pumping machine or pipe line, whether existing from before the commencement of this Act or constructed, installed or laid after the commencement of this Act, by the State Government or any municipal board or town area committee, notified area committee or Jal Sansthan or by any other public authority or with the permission of the Sub-Divisional Officer by any other person;

(c) contravenes the provisions of section 15, shall be punishable with imprisonment which may extend to one year and shall also be punishable with fine which may extend to one thousand rupees.

- (2) Whoever contravenes any other provisions of this Act or any order made thereunder shall be punishable with fine which extend to five hundred rupees, and if the offence is a continuing offence, with a further fine not exceeding twenty-five rupees for every day during which the offence continues after the date of first conviction for such offence.
- (3) Provisions of sub-sections (1) and (2) shall also apply in respect of any attempt or abatement of offence referred to in the said sub-sections.
- (4) All offences punishable under sub-section (1) shall be cognizable.

Offences by
companies

19. (1) If the person committing an offence under this Act is a company, the company as well as every person in-charge of and responsible to the company for the conduct of its business at the time of the commission of the offence 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 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 any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of offence is attributable to any neglect on the part of any managing agent, secretaries and treasurers, directors, managers or other officer of the company, such managing agents, secretaries and treasurers, director, manager or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-- For the purposes of this section-

(a) "company" means any body corporate. and includes a firm or other association of individuals: and

(b) "Director" in relation to a firm, means a partner in the firm.

Protection of
action

20. No proceeding or order purporting to be taken or made under this Act shall be called in question in any court and no civil or criminal proceeding shall be instituted against any person for anything done or intended to be done in good faith under this Act.

[The Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975] [Section 21-23]

- Power to make rules 21. (1) The State Government may by notification in the *Gazette* make rules for carrying out the purposes of this Act.
- (2) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the State Legislature while it is in session for a total period of thirty days comprised in its one session or more than one successive sessions and shall unless some later date is appointed, take effect from the date of their publication in the Official *Gazette*, subject to such modification or annulments as the two Houses of Legislature may during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.
- Continuance of Kumaun Water supply Rules, 1930 22. The Kumaun Water Rules, 1930, in so far as they are not inconsistent with the provisions of this Act, shall be deemed to have been made under this Act and they shall continue in force until they are altered or repealed or amended by rules made in exercise of the powers conferred by or under section 21.
- Repeal and savings U.P. Ordinance no. 19 of 1975 23. (1) The Kumaun and Garhwal Water (Collection, Retention and Distribution) Ordinance, 1975 is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act had come into force on July 15, 1975.
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