



सत्यमेव जयते

महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण अधिनियम, 2005 चे कलम 3 अन्वये स्थापित वैधानिक प्राधिकरण

Maharashtra Water Resources Regulatory Authority

A Statutory Authority Established u/s 3 of Maharashtra Water Resources Regulatory Authority Act, 2005



स्वातंत्र्याचा अमृत महोत्सव

ORDER NO. 07/ 2022

(Case No 4 of 2021)

An Appeal filed by Pioneer Distilleries Limited, Balapur,
Taluka Dharmabad, District Nanded in the matter of Appeal
under section 22(3) of the MWRRA Act 2005, being aggrieved
by the PDRO's Order dated 27/04/2021.

Pioneer Distilleries Limited,
Balapur, Taluka Dharmabad,
District Nanded.

.....Appellant

Versus

- 1) Sub- Divisional Engineer,
Babhali Irrigation Sub-Division,
Umari, Nanded - 431807
- 2) Executive Engineer,
Nanded Irrigation Division (North),
Langamwadi, Nanded - 431605

.....Respondents



Mr. Girish Godbole, Advocate I/b Mr. Mayur Khandeparkar, and Mr. Vijay Purohit for the Appellant

Dr. Uday Warunjikar Advocate I/b Mr. Vilas Tapkir for the Respondents

**Coram : Shri. Sanjay D. Kulkarni, Member (WR.Engg.)
CA. Shwetali A. Thakare, Member (Economics)
Adv. Dr. Sadhana S. Mahashabde, Member (Law)**

Date : July 25, 2022

BACKGROUND

- 1.0** An Appeal is filed by Pioneer Distilleries Limited, Balapur, Taluka Dharmabad, District Nanded (The Appellant) on 06/06/2021 under Section 22(3) of the Maharashtra Water Resource Regulatory Authority (MWRRA) Act 2005, being aggrieved by the Primary Dispute Resolution Officer's (PDRO) Order dated 27/04/2021.
- 2.0** The Appellant, in his appeal, has submitted that the Appellant is engaged in the business of manufacturing alcohol. The Applicant uses the fermentation & distillation process for the production of alcohol which requires water to dilute the molasses/grain floor and also as a coolant during the fermentation & distillation process. The major usage of water at the distillery is limited to processing only and water is not used as raw material. As for the usage of water as raw material, only limited water to the extent of 5 liters per case is used in the production of Indian Made Foreign Liquor. The Applicant, after fermentation & distillation, recovers alcohol content in the process called Rectified Spirit & Extra Neutral Alcohol, which is a raw material for making



country liquor & foreign liquor respectively. The quantity of water used in fermentation is being relocated in the form of process condensate and recycled back in the process to minimize fresh water requirement.

3.0 The Collector, Nanded was the Statutory Authority to grant permissions for water use as per Maharashtra Land Revenue Code, 1966 and Maharashtra Land Revenue (Permission for use of water) Rules 1969. As per the request of the Appellant, the Collector, Nanded had granted permission to the Appellant on 19/05/1995 to use 30 lakh liters water per day for agriculture purpose from Godavari River near village Aloor through lift irrigation. This permission was granted with the terms & conditions that the Appellant will have to pay water charges at Rs. 1.00 and will be binding to pay increased water charges at the revised rate by the Government from time to time. Further, The Collector, Nanded had granted permission on 01/02/2003 to use 8 lakh liters of water per day for industrial purposes from the Godavari River. Both permissions were given by the Collector, Nanded as the said portion of Godavari River was not notified and also before construction completion of the Babhali Project and the Appellant has been paying charges as per the demands raised by the Collector, Nanded.

4.0 The Appellant had requested the Collector, Nanded on 29/07/2013 to permit to lift of 50 lakh liters of water per day from the existing Jack well on Godavari River with the purpose to expand production of Malt Spirit Plant and Bottling unit of Indian Made Foreign Liquor. The Appellant had also submitted that they have already obtained necessary approvals from Maharashtra Pollution Control Board and factory inspector.



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- 5.0 The Appellant had requested Executive Engineer, Nanded Irrigation Division (North), Nanded on 24/08/2015 to regularize permission to lift 38 lakh liters of water per day from the existing Jack well on Godavari River for industrial purposes as per the directions of the Collector, Nanded.
- 6.0 Sub-Divisional Engineer, Babhali Irrigation Sub-Division, Nanded vide letter dated 14/12/2018 had informed the Appellant that State Government vide Notification dated 31/07/2018 had notified River Godavari in this Office jurisdiction till the borders of Telangana State under Section 11 of Maharashtra Irrigation Act, 1976. The said Notification will be applicable from 01/11/2018 onwards for regulation and supply of water. As the Appellant's water-lifting point is located at downstream of Babhali Project from Godavari River and water is used as 'Raw Material', the Appellant was charged at Rs. 240/m³ as per MWRRA's Bulk Water Tariff (BWT) Order No. 01/2018 dated 11/01/2018. Accordingly, Executive Engineer, Nanded Irrigation Division (North), Nanded vide demand notice dated 10/01/2019 issued a bill of Rs. 20,75,75,500/- (Indian Rupee Twenty Crore Seventy Five Lakh Seventy Five Thousand Five Hundred Only) for the Month of November 2018.
- 7.0 The Appellant, vide letter dated 19/01/2019, had clarified against the above demand notice that the Appellant is a process industry and water is used for processing and not as a raw material. Further, he also claimed that the source category is 'Partly assured water supply' since it is located at downstream of the Babhali Project. The Appellant is paying requisite water charges regularly as per the demand raised by the Collector, Nanded. Sub- Divisional Engineer, Babhali Irrigation Sub-Division, Nanded vide letter dated 23/01/2019 had given a point-wise reply and stated that as per footnotes of Annexure No.3 of



MWRRA's BWT Order No. 01/2018 dated 11/01/2018, the Appellant falls under the category of water used as raw material. He further stated that before the construction of the Babhali Project, the source was classified as 'partially assured water supply' but after the construction of the Babhali Project in 2013, the source has to be classified as 'controlled water supply'.

- 8.0 Executive Engineer, Nanded Irrigation Division (North), Nanded vide demand notice dated 11/02/2019 issued a bill of Rs. 62,44,56,296/- (Indian Rupee Sixty Two Crore Forty Four Lakh Fifty Six Thousand Two Hundred Ninety Six Only) for the Month of January 2019 including the arrears of previous bills.
- 9.0 Being aggrieved by these revised water charges, the Appellant had approached the Hon'ble High Court at Bombay, Aurangabad Bench through Writ Petition No. 2468/2019. The Hon'ble High Court vide order dated 20/06/2019 had disposed of the Writ Petition with the following direction;

....

2. *Mr. Dhorde, the learned senior advocate on instructions submit that the Petitioner would avail the remedy of appeal and the impugned order to be continued for a period of four weeks. The amount of Rupees Fifty Lakhs be transmitted to respondent no. 4.*

3. *In light of the above, the writ petition is disposed of as withdrawn with liberty to the petitioner to avail the appellate remedy. All contentions kept open. The interim relief passed by this Court shall continue for a period of three weeks from today so as to afford an opportunity to the petitioner to avail the necessary relief from the appellate forum. Needless to state that on lapse of three weeks the protection granted by this Court shall come to an end. The amount of*



Rupees Fifty Lakhs deposited by the petitioner shall be transmitted to respondent no.4. The same is without prejudice to the rights and contentions of either parties.

....

10.0 Accordingly, the Appellant had approached the PDRO and filed an application on 24/06/2019. The Appellant contended that its water-lifting point is situated at downstream of the Babhali Project and it should be termed as 'partly assured' and not as regulated releases. The Appellant contended that it has been lifting water from the natural flow of the Godavari River and if any of the four categories set out in Annexure 3 of MWRRA's BWT Order No. 01/2018 dated 11/01/2018, 'Partly Assured Water Supply' would be of closest proximity and only category applicable to the Appellant. The Babhali Project's gates remain open during monsoon season only and Maharashtra State releases 0.6 Thousand Million Cubic Feet of water to Telangana State on 1st March every year depending upon water availability in Babhali Project. The Appellant had been constrained to minimize its production several times due to scarcity of water.

11.0 The PDRO had conducted two hearings in the matter i.e. on 28/11/2019 & 04/11/2020 and disposed of the matter before him by order dated 27/04/2021. The PDRO's conclusion and decision, given in the above-said Order, are as follows;

1. Considering the 2014 report of Auditor General and Annexure No. 3 of Maharashtra Water Resources Regulatory Authority, Mumbai Order No. 1/2018 dated 11/01/2018, the source of water supply for Pioneer Distilleries as Regulated Water Releases with Conveyance Losses is just right.



2. As per Note No. 2 of Annexure No. 3 of Maharashtra Water Resources Regulatory Authority, Mumbai Order No.1/2018 dated 11/01/2018 and as per water use calculation explained by the Respondents, water supplied to Pioneer Distilleries as used for raw material is just right.
3. Accordingly, the rate of Rs. 240 per/cum levied by the department as per the order of MWRRRA dated 11/01/2018 is correct.
4. NEERI Organization has given the bifurcation of the water required for actual production and for other uses of the industrial sector that uses water as raw materials like distilleries, breweries, soft drinks, mineral water and others. Accordingly, the use of water for beverages is mentioned as 80% for actual production and 20% for other purposes. It is possible to charge accordingly.

12.0 The Appellant, being aggrieved by PDRO's order, has filed an Appeal before MWRRRA under section 22(3) of the MWRRRA Act 2005 on 06/06/2021. The Appellant has submitted that the PDRO has failed to pass a sound and reasoned Order as it is a settled law that on the order of a Court or a quasi-judicial authority must have reasons recorded which reflect on its decision to accept or reject a party's contention. The PDRO has relied upon the Auditor General's Report of 2014 and NEERI's study which were not part of the Appellant's record and the Appellant could not get the opportunity to deal with and rebut the Report in detail. The Appellant's main contentions are that the rates applied, source classification, and classification of water used as raw material are erroneous and illegal.



13.0 The Appellant, through its Appeal has prayed for the following reliefs:

- a) That this Hon'ble Authority be pleased to call for papers and proceedings in relation to the Application dated 24th June 2019 filed by Appellant before Ld. Primary Dispute Resolution Officer, as well as the Impugned Order dated 27th April 2021, and after considering the legality, validity and propriety of the Impugned Order dt.27th April 2021 (being Exhibit - A hereto), be pleased to quash and set aside the Impugned Order dt. 27th April 2021 and consequent thereupon allow the Application dt.24th June 2019 in terms of prayer clauses (a) to (c) at Paragraph 21 of the Application;
- b) That this Hon'ble Authority be pleased to order and declare that the bulk water supply rates for industrial use applicable to the Appellant are on the basis of it being a 'process' and in the category of Partly Assured Water Supply;
- c) That this Hon'ble Authority be pleased to call for papers and proceedings in relation to the Demand Notices dated 31st December 2018, 10th January 2019 and 11th February 2019 and after considering the legality, validity and propriety, this Hon'ble MWRRA authority be pleased to quash and set aside the Demand Notices dated 31st December 2018, 10th January 2019 and 11th February 2019 (Exhibit-J to the Application dated 24th June 2019) with a further order and direction to issue an appropriate demand;
- d) That this Hon'ble Authority be pleased to direct the Respondent to either refund the amount of INR 50,00,000/- (Indian Rupee Fifty Lacs only) or appropriate the amount in accordance with the revised demands, that was deposited by the Appellant pursuant to the order of the Hon'ble Bombay High Court dt.20th June 2019 (Exhibit -P to the Application dt.24th June).
- e) Pending hearing and final disposal of the present appeal, this Appellate Authority be pleased to:
- i. Stay the effect, implementation, operation and execution of the Impugned Order dated 27th April 2021 passed by Ld. Primary Dispute



Resolution Officer, including but not limited to, restraining the Respondents from taking any coercive steps or initiating any action against the Appellant pursuant to and/or in relation to the Impugned Order;

ii. Stay the effect, implementation, operation and execution of the Demand Notices dated 31st December 2018, 10th January 2019 and 11th February 2019 issued by the Respondents but not limited to, restraining the Respondents from taking any coercive steps or initiating any action against the Appellant pursuant to and/or in relation to said Demand Notice that may be issued or received during the pendency of the present appeal by the any other Competent Authority or by the Respondents in relation to bulk water rates for industrial use; and

iii. Restrain the Respondents from taking any coercive steps or initiating any action against the Appellant on the basis of and or in relation to the impugned order dated 27 April 2021 passed by Ld. Primary Dispute Resolution Officer; and or Demand Notices dated 31st December 2018, 10th January 2019 and 11th February 2019

f) That this Hon'ble Authority be pleased to grant ad-interim relief in terms of prayer clause (e) (i), (ii) and (iii);

g) Any other Order as this Hon'ble Authority may deem fit to pass in the interest of justice.

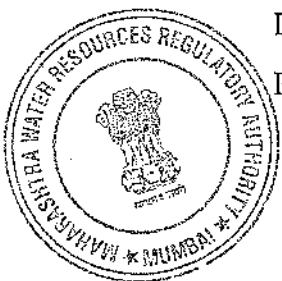
14.0 After filing the Appeal, the matter could not be taken up for hearing due to the Covid-19 pandemic. The Authority, vide letter dated 07/10/2021, had directed Respondents to file Affidavit in Reply within four weeks. The Advocate of the Appellant vide their email dated 29/10/2021 had sought an urgent hearing of the Appeal on the ground that Respondents had issued new demand notices. The Respondents



directed the Appellant to make payment of the cumulative amount of Rs. 221,94,30,684/- (Indian Rupee Two Hundred & Twenty-One Crore Ninety Four Lakh Thirty Thousand Six Hundred Eighty Four Only) for the period of February 2019 to September 2021. Respondent No. 2 vide letter dated 03/11/2021, had submitted that Adv. Vilas Tapkir had been appointed as their Advocate in this matter & requested an extension of 15 days to file the reply. Thereafter, this Authority conducted three hearings in the matter i.e. on 20/01/2022, 10/02/2022 & 28/04/2022.

15.0 Before the 1st hearing, the Appellant had filed an Additional Affidavit dated 19/01/2022 to place additional facts and documents on record. The Appellant had submitted that based upon the information received under the Right to Information Act, three distilleries companies, viz. Sidhi Sugar & Allied Industries Ltd, Latur; Viraj Alcohols & Allied Industries Ltd, Sangli; and Deccan Sugar Private Ltd, Yavatmal which utilizes water for manufacturing alcohol, are being charged at processing. Therefore, the Appellant should be charged at processing. The Appellant had further submitted that based upon the news articles published in the newspaper, Maharashtra State could not release water to Telangana State on 1st March for years 2018 & 2019 as per Hon'ble Supreme Court Order dated 28/02/2013, due to the non-availability of water in Babhali Project. Thus, it proves the fact that the water supply provided to the Appellant is neither constant nor assured.

16.0 Adv. Vilas Tapkir, Advocate for Respondents, vide application dated 19/01/2022, has submitted that he needed time to file an Affidavit in Reply and therefore he has requested for adjournment of the hearing. During the hearing on 20/01/2022, the Authority directed the Respondents to file an Affidavit in Reply by 03/02/2022 and the



Appellant to file an Affidavit regarding jurisdiction & locus standi and may file Rejoinder on Respondent's Affidavit in Reply by 07/02/2022.

17.0 Accordingly, Respondent No. 2 had filed an Affidavit in reply dated 27/01/2022 on Appellant's Appeal and Additional Affidavit. The Respondent submitted that the Appellant does not have locus standi as he is not yet 'Sanctioned Industrial Bulk Water Users' as per MWRRA Act, 2005, and the permissions given by the Collector, Nanded are null & void now as it needs to be renewed every year which is not done by the Appellant. The Appellant cannot file an appeal under Section 22 (3) of the MWRRA Act, 2005 as the dispute is not about entitlement. The Respondent also pointed out that the Appellant had misused agriculture permission given in the Year 1995 for industrial purposes.

18.0 Respondent No. 2 had further submitted that the Appellant was not charged as per revised water rates fixed by the State Government from time to time by the Collector, Nanded. The Appellant was initially charged as per Water Resources Department's (then Irrigation Department) Government Resolution dated 10/09/1991 but the Appellant was not charged as per revised Water Resources Department's Government Resolution dated 29/05/2001, 12/09/2001, 28/11/2002, 31/07/2006 & 29/06/2011. The Collector, Nanded, or the Water Resources Department needed to reassess the impact on Government Revenue due to short payment by the Appellant. As per the Water Resources Department's Government Resolution dated 28/11/2002, a partially assured water supply means a stretch of river where only natural flow occurs, and also as per MWRRA's Order No. 01/2018, it means exclusively from unregulated rivers without releases from any reservoir/canal.



19.0 Respondent No. 2 had further submitted that the Appellant had submitted a proposal for regularisation of industrial water usage of 38

lakh liters per day vide letter dated 24/08/2015 but it could not be processed then as the said portion of Godavari River was not notified as per Maharashtra Irrigation Act, 1976. After Water Resources Department notified the said portion of Godavari River on 31/07/2018, the Respondent had called information for regularisation of water usage which was not furnished by the Appellant and as per MWRRA's BWT Order No. 01/2018 demand notices of water charges were issued. Thereafter, as per the request of the Appellant, a meeting was scheduled, not a judicial hearing as contemplated by the Appellant, wherein it was asked to submit a bulk water entitlement proposal. Then, the Appellant filed Writ Petition No. 2468/2019 in Hon'ble High Court at Bombay, Aurangabad Bench which was disposed of vide order dated 20/06/2019 with liberty to avail appellate remedy. Thereafter, the Appellant had filed an application before PDRO who has upheld the demand notices served by the Respondents. Being aggrieved by PDRO's Order, the Appellant had filed the present appeal under Section 22 (3) of MWRRA Act, 2005.

20.0 Regarding classification of water source, the Respondent submitted that before the construction of the Babhali Project till 2013, the appellant was lifting water through source 'partially assured water supply'. But after the construction of the Babhali Project, as the lifting point is at downstream of the Babhali Project, the source should be classified as 'Regulated water supply'. Regarding the cost of pipeline and maintenance, all non-irrigation customers have to make their own arrangements for water conveyance.

21.0 Regarding the water availability of the Babhali Project, the Respondent had submitted that when there is less rainfall, then water availability is affected for all non-irrigation water users, even users who lift water from the reservoir. The Respondent pointed out that based on the



Appellant's production figures, it is crystal clear that the Appellant had not been affected by the water shortage crisis. Further, the Appellant's lifting point is in Doh (deep stretch) in the Godavari River where it gets water recharge benefits of water storage on the upstream side. Thus, the Appellant gets assured water supply throughout the year. Therefore, intake source has rightly to be classified as 'Regulated water supply with conveyance losses'.

22.0 Regarding classification of water usage type, the Respondent had submitted that as per footnotes of Annexure No. 3 of MWRRA's BWT Order No. 01/2018, industries using water as raw material means those manufacturing cold drinks, breweries, mineral water, or a similar kind. Therefore, the Appellant falls under a similar kind of industry which produces products such as liquor, alcohol, and allied products. The Respondent further submitted that in pursuance of Hon'ble High Court Order in WP 4263/2005 & WP 1903/2006, an internal committee of Maharashtra Industrial Development Corporation (MIDC) under the Chairmanship of Chief Engineer, NEERI for evaluation & benchmarking of water required for manufacturing of soft drinks, mineral water, beverages & liquor. NEERI recommended the percentage of water used for raw material & processing for the liquor industry shall be 65% & 35% respectively. MIDC had accepted NEERI's recommendations vide circular dated 07/10/2011. Further, the Appellant has been paying Rs. 10/m³ from 2014 onwards which is a rate prescribed for water used as raw material as per Annexure 1, Sr. No. B, Column 8 (from 01/04/2010) of Water Resources Department's Government Resolution dated 31/07/2006. Therefore, the Respondent has kept the same classification as fixed by the Collector, Nanded, and accordingly, demand notices of water charges as per MWRRA's BWT Order No. 01/2018 were issued. The Respondent also submitted that the Appellant may be directed to pay the difference amount of water



charges from 1999 to November 2018 to the Collector, Nanded, and from November 2018 onwards to the Respondent.

23.0 Regarding water charging to three distilleries companies, the Respondent, in Joiner Affidavit in Reply, had submitted that the present case should be decided by the principles of law and should not be influenced by the errors of other field officers if any. The bills are subject to Audit and if any errors occurred, will get eventually corrected & adjusted in subsequent bills. Two of the above companies are sugar factories but may not have a bottling plant producing Indian Made Foreign Liquor as the Appellant.

24.0 The Respondent further submitted that the Appellant has not sanctioned bulk water user under MWRRA Act, 2005 and has not entered into an Agreement with Water Resources Department. The Appellant automatically gets benefits from the releases of the Babhali Project as per Hon'ble Supreme Court order and gets water recharge benefits due to water storage on the upstream side as its lifting point is in Doh (deep stretch) in the Godavari River. The production figures of the Appellant's last two decades substantiate it is not affected due to the non-availability of water. Therefore, the Appeal may not be entertained without deposition of at least 5% of the demand. However, during the hearing on 10/02/2022, Adv. Vilas Tapkir for Respondents submitted that due to typing mistake, para 11 (K) should be read as '*It is prayed to the Ld. Authority that the Appeal may not be entertained without deposition of at least 50% of the demand or at least to the extent of the provisions of the amount made in the budget of the appellants under the head of water charges which was 5 crores for the FY 2020-21.*'



25.0 During the hearing on 10/02/2022, Adv. Girish Godbole for the Appellant has submitted that he has received Respondent's Affidavit in Reply on 03/02/2022. As these replies are voluminous, the Appellant

requires four weeks to file an Affidavit. Accordingly, the Authority granted the Appellant's request and also directed him to file an Affidavit on additional information.

26.0 As per the direction of the Authority, the Appellant had filed an Affidavit in Rejoinder dated 10/03/2022. The Appellant had submitted that the Respondents had produced certain new documents that are never produced or referred to in the proceedings before PDRO. Also, the impugned order of PDRO had certain references to certain documents which were not served to the Appellant, and thus, the Appellant could not respond. Therefore, the impugned order of PDRO should be set aside and remand the matter back to PDRO for fresh adjudication. The Appellant had been paying applicable water charges as demanded by the Collector, Nanded from time to time i.e. Rs. 1.00 per 10 m³ i.e. per 10,000 liters from 1999 to 2013 and Rs. 10.00 per m³ i.e. per 1,000 liters from January 2014 to October 2018 towards industrial use. During this period, water charges levied were not under any specific category or purpose for which it is used which was inserted by this Authority in its Bulk Water Tariff Order No. 01/2018. Before November 2018 i.e. before the Godavari River notification, the subject matter was governed by the Maharashtra Land Revenue Code, 1966. Therefore, the Appellant has challenged the action of Respondents from November 2018 onwards.

27.0 The Appellant had further submitted that the Respondents have never objected to and have acknowledged the legitimate water sourcing and use by the Appellant. The Respondents did not challenge the PDRO's jurisdiction in the proceedings before PDRO & have raised the issue for the first time at the appellate stage. The Respondent's contention about the footnote of Annexure 3 of the MWRRA's Order No. 01/2018 based on the principle of *ejusdem generis*, is erroneous and misplaced. The



Respondent's reliance on the Hon'ble High Court at Bombay order in Waluj Industries Association and Pepsico Holdings is misplaced. The Respondent's reliance on the NEERI report is objectionable and also outdated as the Report was prepared in the Year 2010. Even independent agencies organisation like Council for Scientific & Industrial Research, and Vasantdada Sugar Institute who are experts in the field opined that water used for Rectified Spirit & Extra Neutral Alcohol cannot be considered raw material.

28.0 Regarding the Para-wise reply of the Respondents, the Appellant had submitted that his Appeal is maintainable, as PDRO has passed the order under Section 22(1) of the MWRRA Act. The averments of Respondents in other paras are misleading and the same are denied by the Appellants. As per the direction of the Authority, the Appellant has given year-wise information about quantity allotted, water consumption, and amount deposited. The Appellant had stated that they have paid water charges to a total amount of Rs. 2,77,80,680/- (Indian Rupee Two Crore Seventy Seven Lakh Eighty Thousand Six Hundred Eighty only) to the Collector, Nanded for the period from January 1999 to October 2018. The Appellant has also paid water charges of Rs. 1,26,46,053/- (Indian Rupee One Crore Twenty Six Lakh Forty Six Thousand Fifty Three only) to the WRD for the Period from November 2018 to January 2022. The averments of Respondents in Joiner Affidavit in Reply in paras are misleading and the same are denied by the Appellants.

29.0 During the hearing on 28/04/2022, Adv. Girish Godbole for the Appellant has submitted that this Authority is to decide the Appellant's request to remand back the matter to PDRO as PDRO has not given reasoned order and production of new documents by the Respondents. The Appellant is paying the bills as demanded by the



Collector, Nanded from 1993 to October 2018 and the dispute started from November 2018 onwards. The Appellant is ready to execute the Agreement but issues about the source & water use category need to be resolved.

30.0 Adv. Uday Warunjikar for the Respondents has submitted that as per Section 22 of the MWRRA Act, 2005 disputes & appeals related to issuance or delivery of entitlement are admissible before PDRO or this Authority. The Appellant has no entitlement or permission as per MWRRA Act, 2005. Unless it is decided, the Appellant cannot approach PDRO or this Authority. The Respondents had no objection to remanding back the present matter to PDRO, but the Appellant should pay 50% of the amount as demanded by the Respondents.

31.0 After hearing all the parties, the Authority closed the proceedings for the Order.

FRAMING OF ISSUES

32.0 This Authority, having considered the contentions made in the Appeal & submissions of the parties, the documents placed on record as well as the data submitted, framed the following relevant issues for consideration and adjudication:

- (i) Whether the Authority has jurisdiction to adjudicate the present matter?
- (ii) Whether the permissions given to the Appellant - Industry are legally valid as per the law?



- (iii) Whether the Appellant - Industry's lifting source should be categorised under 'Regulated Water Supply with Conveyance Losses'?
- (iv) Whether the Appellant - Industry should be charged as Industry using water as 'Raw Material'?
- (v) Whether the water charges levied and recovered by the Revenue Officer are as per the prevailing applicable rates decided by the State Government / this Authority?
- (vi) Whether the Impugned Order of the PDRO dated 27/04/2021 is required to be set aside and the matter to be remanded back to the PDRO?
- (vii) Whether any other directions are required to be given to the Appellants and Respondents?

FINDINGS OF THE AUTHORITY

33.0 Before answering the above issues, the Authority has gone through the following provisions of relevant laws related to use of water;

- (a) The Section 70 of the Maharashtra Land Revenue Code, 1966 reads as below;

The State Government may authorize the Collector or the officer in charge of a survey or such other officer as it deems fit, to fix such rates as it may from time to time deem fit to sanction, for the use, by holders and other persons, of water, the right to which vests in the Government and in respect of which no rate is leviable under any law relating to irrigation in force in any part of the State. Such rates shall be liable to



revision at such period as the State Government shall from time to time determine, and shall be recoverable as land revenue:

Provided that, the rate for use of water for agricultural purposes shall be one rupee only per year per holder.

- (b) Rule 3 of Maharashtra Land Revenue (Permission for use of water) Rules 1969 reads as below

Procedure for grant of permission - The revenue officer on receipt of an application under Rule 2, - (a) shall send to the applicant a written acknowledgment of its receipt,

and (b) may, after due enquiry and after taking into consideration the interests of all persons already permitted to use such water, either grant the permission applied for, or after recording his reasons refuse the permission:

Provided that, when the revenue officer fails to inform the applicant of his decision within a period of fifteen days from the date of receipt of the application, the permission applied for shall be deemed to have been granted:

Provided further that, no permission shall be refused unless the applicant is given a reasonable opportunity of being heard.

- (c) **Provisions in Maharashtra Irrigation Act, 1976**

Section 2 (2) "Appropriate Authority", in relation to a canal constructed, maintained, controlled or managed by the State Government or the Company or a Zilla Parishad, means the State Government, the Company or the Zilla Parishad respectively.

Section 2 (3) "canal" includes -



(a) all canals, channels, pipes, tube-wells, domestic water-supply works and reservoirs constructed, maintained or controlled by the Appropriate Authority for the supply or storage of water ;

(b) all works, embankments, structures and supply and escape channels connected with such canals, channels, pipes, tube-wells, domestic water-supply works and reservoirs, and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, pipes, tube-wells domestic water-supply works and reservoirs ;

(c) all fields-channels, water courses, drainage-works and flood embankments as hereinafter respectively defined or explained in this Act;

(d) any part of a river (including its tributaries), stream, lake, natural collection of water or natural drainage-channel, to which the State Government may apply the provisions of section 11, or of which the water has been applied or used before the commencement of this Act for the purpose of any existing canal ;

Section (4) "Canal Officer" means any officer duly appointed by the State Government by an order in writing for all or any of the purposes of this Act specified in the order, and includes in relation to a canal constructed, maintained, controlled or managed by the Company, a Company Officer, and by a Zilla Parishad, a Parishad Officer ; and the expression "Canal Officer duly empowered in this behalf" or any like expression means a Canal Officer empowered by the Appropriate Authority by an order in writing for all or any of the purposes of this Act specified in the order and also includes a person acting under the general or special order of such Canal Officer



Section 2(6) "Collector" includes any officer appointed by the State Government to exercise all or any of the powers of a Collector under this Act ;

Section 2(13) "Irrigation agreement" has the meaning assigned to it by section 61;

Section 11 (1) Whenever it appears expedient to the Appropriate Authority that the water of any river (including its tributaries) or stream flowing in a natural channel or of any lake or any other natural collection of still water or water flowing in a channel where such water or part thereof, is received from any canal constructed by the Appropriate Authority or by any person who has been duly authorized by the State Government, whether by percolation, regeneration, release or otherwise should be applied or used by the Appropriate Authority for the purpose of any existing or projected canal, or for the regulation, supply or storage of water, the State Government may, by notification in the official Gazette, declare that the said water will be so applied or used after day to be named in the said notification, not being earlier than three months from the date thereof; and thereupon the Collector shall cause notice to be given as provided in section 80.

Section 11 (2) The application or use of the said water or the application or use of water shall be regulated according to the provisions of this Act.

Section 11 (3) Save as provided by sub-sections (1) and (2), no person (other than the State Government) shall apply or use the Water of any river (Including its tributaries) or stream flowing in a natural channel or of any lake or any other natural collections of still water or water flowing in a channel for any projected canal to be constructed by him, except with the previous permission in writing of the State Government and it shall be lawful for the State Government to grant such permission subject to such terms and conditions as it may deem fit in the circumstances of each case.



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Section 59 (1) Such rates shall be leviable for canal water supplied for purposes of irrigation, or for any other purposes under this Chapter as shall from time to time be determined by the Appropriate Authority.

Provided that the water rates levied by the Company or the Zilla Parishad shall be determined with the previous approval of the State Government.

Section 59 (2) The rates shall be payable by the person on whose application the supply is granted, or by any person who uses the water supplied.

Section 88 (1) Every water rate leviable or charged under this Act shall be payable on such dates and to such officers as shall from time to time be determined under the orders of the Appropriate Authority. If the water rate is not paid on or before the due date, then there shall be paid an extra charge not exceed ten percent of the amount due as may be prescribed.

Section 88 (2) Any such water rate or instalment thereof which is not paid on the date when it becomes due shall be deemed an arrear of land revenue due on account of the land, being either land under the irrigable command of a canal or land for the use of which canal water was supplied or which is benefited by percolation or leakage from any canal and shall be recoverable as such arrear by any of the processes specified in section 176 of the Maharashtra Land Revenue Code, 1966, including the forfeiture of the said land.

Section 88 (3) Any rent payable to the owner of a field-channel by a person authorized to use such field-channel may be paid in such instalments and on such dates it's the Canal Officers duly empowered to act under section 29 shall direct and no more of such rent shall at any time be payable to the owner thereof than is actually recovered from the person liable to pay.



Section 88 (4) (a) Any other sum due to the State Government or to a Canal Officer under the provisions of this Act whether on behalf of the State Government or any other person under Part IV of this Act which is not paid when demanded shall, and

(b) any rent or instalment thereof payable to the owner of the field-channel, which is not paid when it becomes due may, on behalf of the owner, be recoverable as an arrear of land revenue in accordance with the provisions of the Maharashtra Land Revenue Code, 1965.

(d) Provisions in Maharashtra Water Resources Regulatory Authority Act, 2005

Section 2 (1) (b) "allocation" means the portion or percentage of an Entitlement declared annually or seasonally by the Prescribed Authority to be made available to the holder of an Entitlement based upon the availability of water for the period within the sub-basin, river basin, project or storage facility for that season or year; and during water crisis or scarcity on the principle of proportionate entitlement.

Section 2 (1) (i) "Entitlement" means any authorization by any River Basin Agency to use the water for the purposes of this Act;

Section 11 (d) to establish a water tariff system, and to fix the criteria for water charges at sub-basin, river basin and State level after ascertaining the views of the beneficiary public, based on the principle that the water charges shall reflect the full recovery of the cost of the irrigation management, administration, operation and maintenance of water resources project;

Section 11 (u) the Authority shall review and revise, the water charges after every three years;



Section 22. (1) The Government shall by general or special order issued in this behalf authorize any competent officer or officers for each River Basin Agency as Primary Dispute Resolution Officer, to resolve the disputes with regard to the issuance or delivery of water Entitlement, under the Act.

Section 22. (2) The Primary Dispute Resolution Officer shall follow such procedure as may be prescribed while hearing the disputes.

Section 22. (3) Any person aggrieved by an order of the Primary Dispute Resolution Officer may, within sixty days from the receipt of such order, prefer an appeal to the Authority :

Provided that, the Authority may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the aggrieved person had sufficient cause for not preferring the appeal within the said period of sixty days

Section 22. (4) The Authority shall follow such procedure while hearing the appeals as may be prescribed.

- (e) **Provisions in “Maharashtra Water Resources Regulatory Authority (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Guidelines, 2019**

“Bulk Water Supply Entity” (BWSE) means any entity engaged in supply of Bulk Water, including the Water Resources Department, Soil and Water Conservation Department, the River Basin Agencies as defined in the Act and any other State Government/Semi-Government /Local Self Government Agency or any other Organization/ Company/Society/Entity in the State sector/ Public/ Private sector managing such water resources projects as the case may be.



“Bulk Water User Entity” (BWUE) means utility or any other entity among various categories of use to whom bulk water is supplied by the Bulk Water Supply Entity.

34.0 In the light of the above provisions contained in the relevant Acts, the observations of the Authority are as follows;

- (a) The Appellant is a Bulk Water User Entity in the present matter and the Respondent, an officer of the Water Resources Department, is the Bulk Water Supply Entity.
- (b) As per the provisions contained in Section 70 in Maharashtra Land Revenue Code 1966, the Collector, Nanded had given permission to the Appellant i.e. Pioneer Distilleries Ltd to lift 30 lakh liter water per day from Godavari River on 19/05/1995 for irrigation (agriculture) use with the following terms & conditions;
 - (i) The Company shall pay Rs. 1.00 per year as water charges to the Government.
 - (ii) If the Government has increased water charges, it is mandatory for the Company to pay the water charges as per increased rates.
 - (iii) Government will not be responsible if water is not available in the Godavari River due to any reason.
- (c) The Appellant is an industry i.e. a distillery company and not an agricultural user. It seems that the Collector or the Tahsildar has not verified the Appellant’s purpose of water use before granting the permission.



- (d) It is evident from the submission of the Appellant that after commencing operations, it has been using water from the Godavari River since the Year 1999.
- (e) Subsequently, as per the request of the Appellant, the Collector, Nanded had given permission to lift 8 lakh liter water per day from Godavari River on 01/02/2003 for industrial use with the following terms & conditions;
- (i) The Applicant Company has deposited Rs. 1,08,240/- at the rate of Rs. 80/- per day for the water used between 1999 & 2003, as per the water charges prescribed in Annexure 1 of Water Resources Department's (then Irrigation Department) Government Resolution No. WTR 1088/745 IM (P), dated 10/09/1991 from 01/07/1993 onwards and number of days water used as certified by the State Excise Department.
- (ii) It is mandatory for the Applicant to get permission renewed every year.
- (iii) Before renewal, the Applicant Company will have to deposit water charges as per the prescribed rate to the Government in advance.
- (iv) If the Government has increased water charges, it is mandatory for the Company to pay the water charges as per increased rates.
- (v) Government will not be responsible if water is not available in the Godavari River due to any reason.
- (vi) The Applicant will not be able to use water if there is any impact on the drinking water supply source, upstream of the



Godavari River at the place from which the Applicant draws water.

- (f) The Appellant through his Affidavit has submitted that the Appellant was paying charges at the rate of Rs. 1.00 per 10 m³ i.e. per 10,000 liters from 1999 to January 2013 as per demands raised by the Collector, Nanded.
- (g) The Collector, Nanded while giving the permission has relied upon the Water Resources Department's (then Irrigation Department) Government Resolution No. WTR 1088/745 IM (P), dated 10/09/1991 for water charges and as per the said Government Resolution, Rs. 1.00 per 10,000 liters is a rate for industrial water use from River where there is no dam on upstream from the lifting point. This rate was applicable from 01/07/1993.
- (h) However, Water Resources Department (then Irrigation Department) vide Government Resolution No. Sankirna 10 00/(326/ 2000)/IM (P), dated 29/05/2001 has revised the water rates. As per the said Government Resolution, the applicable rate from 01/07/1998 for industrial water use from River where there is no dam on upstream from lifting point was Rs. 3.00 per 10,000 liters and from 01/07/1999, Rs. 3.30 per 10,000 liters and from 01/07/2000, Rs. 3.65 per 10,000 liters. However, the Appellant was paying water charges at the rate of Rs. 1.00 per 10,000 liters from 1999 onwards.
- (i) The Water Resources Department (then Irrigation Department) vide Government Resolution No. Sankirna 2002/(148/2002)/IM (P), dated 28/11/2002 has revised the water rates. As per the said Government Resolution, two rates for industrial water use were



introduced i.e. Annexure 1 for Industries that use water as raw materials like Cold drinks, Distilleries (Breweries), Mineral water or similar drinking water and Annexure 2 for Industries excluding Industries that use water as raw material. As per Annexure 1 of said Government Resolution, the applicable rate from 01/09/2001 for industrial water use from River where there is no dam on upstream from the lifting point was Rs. 40.00 per 10,000 liters and from 01/07/2002, Rs. 45.00 per 10,000 liters and from 01/07/2003, Rs. 50.00 per 10,000 liters. As the Appellant is a Distillery Company, the Appellant should have charged as per Annexure 1 of the above-said Government Resolution, whereas, the Appellant was paying water charges at the rate of Rs. 1.00 per 10,000 liters from 01/09/2001 to 30/06/2004.

(j) The Water Resources Department (then Irrigation Department) vide Government Resolution No. Sankirna 1099/(178/99)/IM (P), dated 27/09/2002 had issued guidelines for notifying river and nallah under Section 11 and 117 of Maharashtra Irrigation Act, 1976. As per the Para 6 of the said Government Resolution, it is stated that even though the river is not notified under Section 11 of Maharashtra Irrigation Act 1976, it is legally correct to levy and recover water charges by Water Resources Department (then Irrigation Department).

(k) The Water Resources Department (erstwhile Irrigation Department) vide Government Resolution No. PAPD 2006/(396/03)/IM (P), dated 31/07/2006 has revised the water rates. As per Annexure 1 of said Government Resolution, the applicable rate from 01/07/2004 for industrial water use from River where there is no dam on upstream from the lifting point was Rs. 50.00 per 10,000 liters and from 01/09/2006, Rs. 60.00 per 10,000 liters and



from 01/04/2007, Rs. 70.00 per 10,000 liters and from 01/04/2008, Rs. 80.00 per 10,000 liters and from 01/04/2009, Rs. 90.00 per 10,000 liters and from 01/04/2010, Rs. 100.00 per 10,000 liters. However, the Appellant was paying water charges at the rate of Rs. 1.00 per 10,000 liters from 01/07/2004 to 30/06/2010.

- (i) The Government of Maharashtra in June 2005 enacted the MWRRA Act, 2005. As per Section 11(d) and Section 11(u) of the said Act, this Authority, vide Order letter No. MWRRA 2011/BWT-Order/(59)/315 dated 30/05/2011 had fixed water rates from 2010-11 to 2012-13. This Authority had fixed volumetric basic rates, depending on the source of supply, for bulk water users of the two subcategories of industrial users viz. industries using water as raw material (e.g. beverages) and industries using water for the process (cooling, washing, etc.) and the water rates in Rs. per 10 m³ i.e. per 10,000 liters were determined as under;

Sr. No.	Source of Supply	Process Industries	Industries using water as raw material
1.	<u>Assured Water Supply</u> Major/Medium reservoir/ storage tank without canal	32	160
2.	<u>Regulated Water Supply with Transmission Loss</u> Regulated river portion below dam/canal lift / K.T. weir with back up reservoir / tail race from reservoir	64	320
3.	<u>Partly Assured Water Supply</u> Minor reservoir with canal / K.T. weir without back up reservoir/	16	80



Sr. No.	Source of Supply	Process Industries	Industries using water as raw material
	<i>unregulated rivers without even any K.T. weir or in unregulated river portion flowing within a command area where there is no bandhara or K.T. weir</i>		
4.	<u>Reservoir Constructed by the Water User Entity / User Entity Shared Proportional cost</u> <i>Water user agency (Gram Panchayats, ULBs, Municipal Corporations and other such utilities) has shared proportional cost of infrastructure or constructed dam/ bandhara/ katcha bandhara /K.T. weir at own cost</i>	10.7	53.5

Note : (i) the above basic rates will be applicable in the season between Nov. to February except in Konkan and Vidarbha where it will be between 15th November and 31st March. The corresponding rates in the season between July to October, except in Konkan and Vidarbha where it will extend to 15th Nov., will be 50% of the basic rate and in the season between 1st March to 30th June, except in Konkan and Vidarbha where it will be from 1st April to 30th June, the rates will be 150% of the basic rate.

(ii) domestic component of industrial use will be charged at appropriate domestic rate as given in para 4.2 below.



- (m) During the period of the above applicable rates, the Appellant's lifting source can be considered as 'Partly Assured Water Supply' which is prayed by the Appellant and also accepted by the Respondent till 2013 i.e. before water storage was created in Babhali Project in their respective Affidavits. Therefore, the applicable rate for 'Partly Assured Water Supply' and 'Industries using water as raw material' was Rs. 80.00 per 10 m³ i.e. per 10,000 liters, whereas, the Appellant was paying water charges at the rate of Rs. 1.00 per 10,000 liters from 01/07/2010 to 30/06/2013.
- (n) The water charges determined by this Authority vide the Order dated 30/05/2011, were extended from 2013 to till January 2018. Meanwhile, after the creation of storage in the Babhali Project in 2013, the source category of the Appellant needed to be reclassified and water charges were to be recovered as per the applicable rate. However, the Appellant was paying water charges at the rate of Rs. 10.00 per m³ i.e. per 1,000 liters from January 2014 to October 2018 as per the demands raised by the Collector, Nanded.
- (o) The Authority has reviewed and revised water charges under Section 11(u) of MWRRA Act, 2005 and issued BWT Order No. 01/2018 dated 11/01/2018. The water charges were applicable from February 2018 onwards. The rates of Industries that use water as raw material were increased to 7.5 times in comparison to this Authority earlier BWT Order dated 30/05/2011. Due to this sharp rise in rates, the Appellant may have challenged the demand notices issued by Respondents on the grounds of classification of source category and water use category.



- (p) As per the submission, the Appellant, has paid water charges of Rs. 6,40,040/- (Rs. Six Lakh Forty Thousand Forty only) at the rate

of Rs. 1.00 per 10,000 liters from 1999 to 2013 based on the water consumption and not the actual quantity of water lifted from the Godavari River.

- (q) As per the submission, the Appellant has paid water charges of Rs. 2,71,40,640/- (Rs. Two Crore Seventy One Lakh Forty Thousand Six Hundred Forty only) at the rate of Rs. 10.00 per m³ i.e. per 1,000 liters from January 2014 to October 2018.
- (r) The Appellant has challenged the actions of Respondents from 2018 onwards. The Appellant has no issue with the charges levied & recovered by the Collector, Nanded till October 2018. It is evident from the submission of the Appellant that they have paid water charges at the rate of Rs. 10.00 per m³ i.e. per 1,000 liters from January 2014 to October 2018. The rate is Rs. 10.00 per m³ i.e. per 1,000 liters is a rate prescribed in the Water Resources Department vide Government Resolution No. PAPD 2006/(396/03)/IM (P), dated 31/07/2006 for Industries that use water as 'Raw Material' and water use from River where there is no dam on upstream from the lifting point. The applicable rate from 01/04/2010 onwards i.e. Rs. 100.00 per 10,000 liters which is Rs. 10.00 per m³ i.e. per 1,000 liters. The Appellant has not raised any objection for the water being charged as 'Raw Material' by the Collector, Nanded.
- (s) The Collector, Nanded, while giving permission to the Appellant in the Year 2003 for industrial purposes, has put a condition that it is mandatory for the Applicant to get permission renewed every year. However, there is no documentary evidence that shows that such renewal permissions were taken.



- (t) The Appellant had also requested Executive Engineer, Nanded Irrigation Division (North), Nanded on 24/08/2015 to regularize permission to lift 38 lakh liters of water per day from Godavari River for industrial purposes. By doing so, the Appellant is admitting the fact that they are lifting water illegally without valid permission and still continue to use water.
- (u) The Appellant does not have valid permission from the Appropriate Authority under Maharashtra Irrigation Act, 1976 to use water for industrial purposes or does not have entitlement issued by the concerned River basin Agency as per Section 14 of the MWRRRA Act, 2005. However, based upon the demands raised by the Collector, Nanded & Respondents and charges paid by the Appellant, the Appellant has been lifting water without valid permission.
- (v) The Respondents have so far not taken any appropriate action as per the provisions of the Maharashtra Irrigation Act, 1976 against the Appellant for lifting water without valid permission.
- (w) The PDRO's Order dated 27/04/2021 is based upon the various Government Resolutions issued by the State Government and the BWT Orders issued by this Authority from time to time for fixing source category and classification of water use.

35.0 This Authority, after giving due consideration to the pleadings, submissions and evidence on record has adjudicated the above issues. The findings of this Authority on the issues framed above are as

under:



(i) Whether the Authority has jurisdiction to adjudicate the present matter?

a) The Appellant had approached the PDRO as per the Hon'ble High Court at Bombay, Aurangabad Bench's Order in Writ Petition No. 2468/2019 dated 20/06/2019.

b) The PDRO had disposed of the matter vide his Order dated 27/04/2021. Being aggrieved by the PDRO's Order, the Appellant had approached this Authority in Appeal under Section 22(3) of the MWRRA Act, 2005.

c) As per Section 22 of the MWRRA Act 2005, disputes arising out of issuance or delivery of entitlement are to be resolved by the PDRO and this Authority. However, the present matter is about water tariff and not about entitlement.

d) The Para 15.0 of the MWRRA's BWT Order No. 01/2018 provides for the removal of difficulties, which reads as below;

"Powers to remove difficulties - In case any difficulty in implementation of the revised water tariff system, concerned bulk water user / Irrigation Development Corporation / Government can approach to the Authority with Petition. The decision of the Authority as regards to this shall be final and binding."

e) The subject matter of the present Appeal is related to the difficulty in Bulk Water Tariff. Therefore this Authority has jurisdiction to adjudicate the present matter.

Thus, the answer to the issue is in the affirmative.



(ii) Whether the permissions given to the Appellant - Industry are legally valid as per the law?

- a) As per the Section 70 in Maharashtra Land Revenue Code 1966 and Rule 3 of Maharashtra Land Revenue (Permission for use of water) Rules 1969, the Collector, Nanded had given permission to the Appellant to lift 30.00 lakh liter water per day from Godavari River on 19/05/1995 for irrigation (agriculture) use. Then afterwards, the Collector, Nanded had given permission to lift 8.00 lakh liter water per day from Godavari River on 01/02/2003 for industrial use.
- b) The Appellant is an Industry in the business of manufacturing alcohol. The Collector, Nanded as per the above-said Rules, should have done enquiry and then permission should have been given based upon the Appellant's water use i.e. for industrial use as per Rule 6. Therefore, the permission given in 1995 for agriculture purposes is not valid.
- c) Further, as per the directions of the Collector Nanded, the Appellant has to renew its permission given in the Year 2003. But, there is no documentary evidence that shows that such renewal permissions were taken. Therefore, the permission given in 2003 for industrial purposes is not valid now.
- d) Nevertheless, the State Government has enacted Maharashtra Irrigation Act, 1976 in the Year 1976. As per Water Resources Department's (then Irrigation Department) Government Circular Memorandum No. BIA-1077/42389/ 805/IMG-3 dated 11/08/1980, the Revenue Officer is empowered to give permission for use of water for irrigation or non-irrigation purpose under Section 11(3) of the Maharashtra Irrigation Act,



1976. Therefore, the Collector, Nanded should have given permission to the Appellant as per Section 11(3) of the Maharashtra Irrigation Act, 1976

- e) The Appellant should have submitted an application and on receipt of sanctioned entitlement, the Appellant should have entered into an agreement. Then after, the Appellant should have paid water charges as decided by the State Government as per the various provisions of Maharashtra Irrigation Act, 1976 and as decided by this Authority as per MWRRRA Act, 2005 from 2011 onwards. Therefore, the permissions given to the Appellant under Maharashtra Land Revenue Code 1966 are *Void ab initio*.

Thus, the issue is answered in the negative.

(iii) Whether the Appellant - Industry's lifting source should be categorised under 'Regulated Water Supply with Conveyance Losses'?

- a) The Appellant was given permissions to lift water from Godavari River near Village Aloor, Taluka Dharmabad, District Nanded in the Year 1995 & 2003. At the time of permissions were given, no storage was created at Babhali Project which was created in the Year 2013.
- b) Water Resources Department's Government Resolution No. Sankirna 10 00/(326/2000)/IM(P) dated 29/05/2001 has given the explanation of various terms. 'No dam is constructed on the River, upstream of the lifting point' means that river portion where discharge (water flow) is available naturally.



- c) This Authority, vide Order letter No. MWRRA 2011/BWT-Order/(59)/315 dated 30/05/2011 has also stated that 'Partly Assured Water Supply' means Minor reservoir with canal / K.T. weir without back up reservoir / unregulated rivers without even any K.T. weir / in unregulated river portion flowing within a command area where there is no bandhara or K.T. weir. The Authority, in the said Order also stated that 'Regulated Water Supply with Transmission Loss' means regulated river portion below dam / canal lift / K.T. weir with back up reservoir / tail race from reservoir.
- d) Also, this Authority vide its Order No. 01/2018 dated 11/01/2018 has given explanation of terms viz. 'Regulated Water Supply with conveyance loss' means water use from regulated river reach below dam, canal / K.T. weirs with backup reservoir and 'Partly Assured Water Supply' means water use from exclusively from unregulated rivers without releases from any reservoir / canal.
- e) As Babhali Project is on the upstream of the Appellant's lifting point and the storage in Babhali Project is created in Year 2013, therefore, in view of above, the Appellant's lifting source should be categorised under 'Regulated Water Supply with conveyance loss' from 2013 onwards.

Thus, the issue is answered in affirmation.



(iv) Whether the Appellant - Industry should be charged as Industry using water as 'Raw Material'?

- a) Water Resources Department (then Irrigation Department) vide Government Resolution No. Sankirna 2002/(148/2002)/IM (P), dated 28/11/2002 had bifurcated industrial water rates into two types of industries i.e. industries using water as raw materials like Cold drinks, Distilleries (Breweries), Mineral water or similar for drinking water purpose and Industries excluding industries that use water as raw materials. The rate for industries using water as raw materials is about five times higher than Industries excluding industries that use water as raw materials.
- b) The above bifurcation and the principle continued in Water Resources Department's Government Resolution No. PAPD 2006/(396 /03)/IM (P), dated 31/07/2006 also.
- c) This Authority had also used the same above bifurcation about the type of industry and the principle in its first Bulk Water Tariff Order letter No. MWRRRA 2011/ BWT-Order/(59)/315 dated 30/05/2011.
- d) This Authority vide its Order No. 01/2018 dated 11/01/2018, had revised Bulk Water Tariff and used the same above bifurcation about the type of industry. This Authority had increased the rate for industries using water as raw materials about twenty five times higher than Industries excluding industries that use water as raw materials. As per Note 2 of Annexure No. 3 of the above said this Authority's Order, Industries using water as raw material means those



manufacturing cold drinks, brewery, mineral water, or of a similar kind.

- e) In all the above Government Resolutions and this Authority's Order, the rate for industrial water use is bifurcated into two types of industries and not water use of a particular industry.
- f) The Appellant industry is a distillery company and is engaged in the business of manufacturing alcohol. Therefore, all its water used to lift from the Godavari River should be charged under Industries using water as 'Raw Material'.

Thus, the issue is answered in affirmation.

(v) Whether the water charges levied and recovered by the Revenue Officer are as per the prevailing applicable rates decided by the State Government / this Authority?

- a) The Appellant was given permission to lift water from the Godavari River in the years 1995 & 2003 with condition that if the Government increases water charges, it will be mandatory for the company to pay water charges as per the increased rate.
- b) The Appellant, in his submission, had stated that he has paid water charges at the rate of Rs. 1.00 per 10,000 liters from 1999 to 2013 and at the rate of Rs. 10.00 per m³ i.e. per 1,000 liters from January 2014 to October 2018.
- c) However, the State Government's Water Resources Department through various Government Resolutions mentioned above and this Authority through its Orders dated



30/05/2011 & 11/01/2018, had revised water charges from time to time as per the observation made by this Authority herein above. But, the Appellant was not charged as per revised rate.

Thus, the issue is answered in the negative.

(vi) Whether the Impugned Order of the PDRO dated 27/04/2021 is required to be set aside and the matter to be remanded back to the PDRO?

- a) The Appellant has submitted that Respondents have produced certain new documents that were never produced before PDRO and PDRO did not get the opportunity to consider these documents and the Appellant's rebuttal to these documents while adjudicating the matter.
- b) The Appellant, vide its Affidavit in Rejoinder dated 10/03/2022, has submitted that the impugned order i.e. PDRO's Order dated 27/04/2021 needs to be set aside and remand the matter back to the PDRO for fresh adjudication.
- c) The PDRO's Order dated 27/04/2021, regarding source category and classification of water use of the Appellant, is in line with the various Government Resolutions issued by the State Government and the BWT Orders issued by this Authority from time to time.
- d) However, the Authority has now given ample opportunity to the Appellant & the Respondents to file their say and heard both parties at length. Remanding back the matter for fresh adjudication would not serve any purpose as the subject



matter is primarily within the jurisdiction of this Authority. Hence, this Authority is of the considered view that the Impugned Order of the PDRO is not required to be set aside and there is no need to remand back for fresh adjudication.

Thus, the issue is answered in the negative.

(vii) Whether any other directions are required to be given to the Appellants and Respondents?

- a) The Respondent pointed out that the Appellant has not entered into an Agreement with Water Resources Department and the Appellant replied that unless the issue of classification of source category & water use is resolved, the Appellant cannot enter into an agreement.
- b) The Respondent alleged that while giving permissions to the Appellant, the Collector, Nanded has put a condition that the Appellant has to pay water charges as revised by the State Government from time to time. In view of this condition, the Respondent has to reassess the water charges at the applicable rates from the date on which the rates were revised by the State Government.
- c) The Authority observed that the Appellant is not having water entitlement as per MWRRA Act, 2005. Hence, this Authority is also of the considered view that the Appellant ought to get industrial water use entitlement approved from the Appropriate Authority.



The issue under consideration is answered accordingly.

Order

36.0 Having heard the parties to the litigation, and after giving due consideration to the documents as well as data on record, submissions made by the parties and having adjudicated the issues framed as above, this Authority, hereby orders as under:

- (i) The Collector, Nanded had given permission as per Section 70 in Maharashtra Land Revenue Code 1966 instead of Section 11(3) of the Maharashtra Irrigation Act, 1976. Also, as per the Collector, Nanded's permission letter dated 01/02/2003, the Appellant has not renewed its permission from 2004 onwards. Therefore, the Appellant has no valid entitlement from the Bulk Water Supply Entity.
- (ii) The Appellant has been charged erroneously causing a huge loss of revenue to the public exchequer from 1999 onwards as the Appellant has not been charged as per the applicable rates issued by the State Government and this Authority from time to time.
- (iii) The Appellant's water lifting source should be categorised as 'Partially assured water supply' until the storage is created in Babhali Project and thereafter the source should be categorised as 'Regulated Water Releases with Conveyance Losses'
- (iv) The Appellant should be charged under the 'Industrial Water Use' with category of water used as 'Raw Material'.
- (v) The Appellant should approach the State Government for entitlement and enter into an Agreement with the Bulk Water Supply Entity within two month from the date of issue of this Order.



- (vi) The Respondent should reassess the water charges to be levied to the Appellant from the beginning as per the applicable rates from the date on which the rates were revised by the State Government or this Authority. The Respondent should inform the Collector, Nanded / Revenue Officer about this matter and about the reassessment of the water charges and issue demand notices to the Appellants accordingly.
- (vii) The Appellant should pay the full amount of the demand notices issued by the Respondents and the Collector, Nanded / Revenue Officer. If the Appellant did not pay within the stipulated time, the Respondent should take action as per the law.
- (viii) The PDRO's Order dated 27/04/2021 need not be set aside or remanded back to PDRO.
- (ix) The Respondent should file Compliance Affidavit on the Orders of this Authority within four month.

The Appeal is accordingly disposed of with no order as to the costs.

Delivered on July 25, 2022.

Sd/-

(Adv. Dr. Sadhana S.
Mahashabde)
Member (Law)

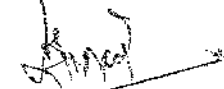
Sd/-

(CA. Shwetal A.
Thakare)
Member (Economics)

Sd/-

(Shri. Sanjay D.
Kulkarni)
Member (W. R. Engg.)




(Dr. Ramnath Sonawane)
Secretary
Maharashtra Water Resources
Regulatory Authority,
9th Floor, Center-1, World Trade Center,
Cuffe Parade, Mumbai - 400005.