



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



स्यात्तन्वाचा अमृतं पहातस्य

File No : MWRRA/2019/Legal/Case No. 12 (2019)/217

Date : 31/03/2023

Case No. 12 of 2019


In The Matter of

A Petition filed by M/s Pernod Ricard India Pvt. Ltd for revision of the water bill as per bifurcation of process water and as raw material.

Please find enclosed herewith a copy of MWRRA Order No. 01/2023 dated 29/03/2023 in the above matter.

Encl : As above




(Dr. Ramnath Sonawane)
Secretary, MWRRA

Copy for information and necessary action to :-

1. M/s Pernod Ricard India Pvt. Ltd, 126, Kadwa Mhalungi, post, Valkhed, Dindori, District- Nashik, Maharashtra-422 202 (Petitioner).
2. Executive Engineer, Palkhed Irrigation Division, Opposite Ved Mandir, Trimbak Road, District Nashik - 422002 (Respondent - 1).
3. Superintending Engineer and Administrator, Command Area Development Authority, Sinchan Bhavan, Trimbak Raod, Nashik - 422002 (Respondent - 2).



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

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

Maharashtra Water Resources Regulatory Authority

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ORDER NO. 01/2023

(Case No 12 of 2019)

In The Matter of

A Petition filed by M/s Pernod Ricard India Pvt. Ltd for revision of the water bill as per bifurcation of process water and as raw material.

M/s Pernod Ricard India Pvt. Ltd,
Having unit at
126, Kadwa Mhalungi, post, Valkhed,
Dindori, District- Nashik,
Maharashtra-422 202.

.....Petitioner

V/s.

- 1) Executive Engineer,
Palkhed Irrigation Division,
Opposite Ved Mandir, Trimbak Road,
District -Nashik-422 002
- 2) Superintending Engineer and Administrator,
Command Area Development Authority,
Sinchan Bhavan, Trimbak Raod, Nashik - 422 002

.....Respondents



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Mr. Rony John, Advocate for the Petitioner

Mr. R. B. Gowardhane Executive Engineer, Palkhed Irrigation Division,
Nashik for the Respondents

Coram : Dr. Sanjay Chahande, Chairperson

Shri. Sanjay D. Kulkarni, Member (WR.Engg.)

CA. Shwetal A. Thakare, Member (Economics)

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

Date : March 29, 2023

- 1.0 M/s Pernod Ricard India Pvt. Ltd filed a Petition on 23/07/2019 under Section 13 of the Maharashtra Water Resource Regulatory Authority (MWRRA) Act 2005 read with MWRRA (Conduct of Business) Regulations, 2013 in the matter of revision of water bill as per bifurcation of process water and as raw material.
- 2.0 The Petitioner is a Company, registered under the Companies Act 1956, carrying on the business of manufacture and sale of Indian Made Foreign Liquor (IMFL), import and distribution of Foreign Made Foreign Liquor (FMFL) having several manufacturing units PAN India either on its own or under arrangements with local excise license holders. The Petitioner manufactures Grain Neutral Spirit (GNS) and IMFL in one of its manufacturing unit at Kadwa Mhalungi, post, Valkhed, Dindori, District- Nashik.
- 3.0 The Petitioner submitted that GNS is manufactured from grain through the process of Liquefaction (conversion of sugar from starch), Fermentation and Distillation. The GNS contains 96% alcohol and the said GNS is used for manufacturing of IMFL. The finished product of IMFL contains 42.8% of spirit and balance 57.2% of water. Water is used



during the process of spirit production in the distillery whereas it is used as a raw material in producing IMFL during bottling operations.

4.0 The MWRRA, vide its Order No. 01/2018 dated 11/01/2018, has fixed Bulk Water Tariffs for industrial use. The Respondent - irrigation department is issuing invoices for the water consumptions at the rate of Rs. 120 per cubic meter. The issue of rates was raised before the Respondent, but no corrected / revised invoices issued to the Petitioner. As, this causes huge monetary losses, the Petitioner approached to this Authority.

5.0 The Petitioner, through its Petition has prayed for the following reliefs:

- a) *To charge 20% of water consumed as raw material @ INR 120/- per CUM, (as we are using only 20% as a raw material for production of IMFL); and*
- b) *To charge 80% of water consumed for the distillation process @ INR 4.80/- per CUM , as per the Order dated 11.01.18 (as we are using 80% in the process of production IMFL and not as raw material); and ,*
- c) *Any other relief as this Hon'ble Authority may deem fit and proper.*

6.0 After filing the Petition on 23/07/2019, the Authority scrutinised the Petition and admitted the Petition as per the Para 15 - Powers to remove difficulties of the MWRRA's said Order No. 01/2018. Thereafter, the Authority, vide letter dated 19/09/2019, directed Respondents to file a para-wise Affidavit in Reply on or before 30/09/2019. Accordingly, Respondent No. 1 - Executive Engineer, Palkhed Irrigation Division, Nashik has submitted parawise comment on 29/09/2019 and submitted that as per the Water Resources (then Irrigation) Department's (WRD) letter dated 10/01/1994, water reservation was granted to the Petitioner (then Oceanic Distilleries Pvt. Ltd) for manufacturing of Malt Spirit. The Petitioner was charged as per the rates for raw materials from the first agreement with the Petitioner i.e. from 03/10/1997. Also, WRD, vide its



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letter dated 28/04/2008, has clarified that liquor manufacturing also comes under similar industries and water used in such project should be considered as water used as "Raw Material".

7.0 The Authority vide letter dated 15/10/2019 informed all the parties about schedule of hearing on 05/11/2019. Shri. H. R. Deore, Sub-Divisional Engineer for Respondent - Executive Engineer, Palkhed Irrigation Division, Nashik was present for the hearing. However, the Petitioner vide Application dated 04/11/2019 requested to adjourn the hearing, which was not granted by the Authority due to short notice. No one from the Petitioner side marked his appearance for hearing. During the hearing, the Authority directed that Superintending Engineer and Administrator, Command Area Development Authority, Nashik should be made Respondent No. 2 in the present matter and directed to file Para-wise Reply in Affidavit and Notorised form.

8.0 The next hearing in the matter was scheduled on 17/12/2019 and 07/02/2020, but was adjourned as per request of Petitioner. Meanwhile, Respondent No. 1 - Executive Engineer, Palkhed Irrigation Division, Nashik filed an Affidavit in Reply on 16/12/2019. The Respondent denied most of the contentions of the Petitioner. He further submitted that water was a vital source on every stage of manufacturing liquor i.e. fermentation, distillation, dilution, addition and standardization of liquor. Therefore, it was wrong to say that only 20% of the water was used as 'Raw Material' and the charges levied are proper and legal.

9.0 The Petitioner filed 'Additional Submissions' dated 04/02/2020 and submitted that water is used in steam form and as coolant in the various stages of distillation, fermentation, liquefaction process. This water use cannot be classified as raw material. The volume of water content in IMFL is 57.2% of total volume and therefore, ratio of water usage for process and as raw material is 80:20. The Respondent is not levying



charges as per said distinction. Even Hon'ble High Court of Bombay at Aurangabad Bench in M/s Walunj Industrial Association Vs. State of Maharashtra, vide order dated 10/10/2008, has given directions for levying different water charges in manufacturing liquor.

10.0 During the second hearing on 07/02/2020, the Petitioner submitted that as per Hon'ble High Court Order, a distinction has to be made in respect of user of water by the concerned industrial establishment as a raw material for manufacturing finished product as well as user of water by the industrial units for allied activities. The Respondent also submitted that there was no bifurcation of water demand sanction or in the Agreement and there was no domestic demand made separately. The Authority directed the Respondent to file an Affidavit on the applicability of the Hon'ble High Court Order and Petitioner to submit the details of the water used and GNS, IMFL manufactured as per the record certified by the Excise Department.

11.0 The next hearing in the matter was scheduled on 26/02/2020. However, as per the request of Respondent, said hearing was adjourned and thereafter, due to COVID-19 pandemic, no hearings was conducted till March 2022. None of the parties has complied the directions given in the previous hearing. The Authority conducted third hearing in the matter on 03/03/2022 and directed Respondent and Petitioner to file Affidavit on the directions given in the previous hearing dated 07/02/2020. The next hearing in the matter scheduled on 31/03/2022.

12.0 As per the Authority's direction, the Petitioner filed written submissions vide Affidavit dated 29/03/2022. The Petitioner submitted that the Respondent has failed to comply the mandatory conditions stipulated in this Authority's Order No. 01/2018 dated 11/01/2018 for computing water charges recoverable from the Petitioner. The Respondent presumed that the entire volume of water supplied to the



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Petitioner used as raw material. However, the Petitioner explained that only 12.33% of its total water consumption at its manufacturing unit relates to use of water as raw material. The Petitioner entered into an agreement with the Respondent wherein the Petitioner has granted the permission to draw water for its industrial use for a period of six years i.e. from 01/11/2014 to 31/10/2020. During this agreement period, this Authority has issued Bulk Water Tariff (BWT) Order No. 01/2018 dated 11/01/2018 and the water charges payable by Petitioner was solely subject to BWT Order issued by this Authority.

13.0 The Petitioner further submitted that the Petitioner has a licence in Form -I issued by the Commissioner of State Excise, Maharashtra to construct and work a distillery to manufacture spirit/alcohol from maize, jowar, bajra, wheat, rice and barley. The licence was issued in December 1995 and renewed from time to time. The Petitioner also hold licence in Form P.L.L. issued by the Commissioner of State Excise, Maharashtra to manufacture potable liquor. The Petitioner manufactures both GNS/ethanol and IMFL separately in two distinct process. The GNS manufacturing process involves Milling, Liquefaction, Fermentation, Distillation, Decanter, Dryer, Evaporation and Condensate Polishing Unit. The product obtained through this process is GNS which contains 96% ethanol. The water, which is used in liquefaction process, is separated from the alcohol during distillation, dryer and evaporation stage. The collected water is recycled for use in manufacturing process again. Therefore, water used in the manufacturing of GNS is either consumed or recycled during the process and does not become a raw material of final product.

14.0 The Petitioner further submitted that after GNS is manufactured, it is transferred for manufacturing IMFL, which contains 42.8% volume of GNS and remaining 57.2% comprises of distilled and demineralised



water. Therefore, water supplied to the Petitioner is used as raw material in the production of IMFL and the quantum of water used is proportionate to the total IMFL produced by the Petitioner. The present petition relates to BWT Order No. 01/2018 dated 11/01/2018 effective from 01/02/2018 to 31/12/2021. The volume of water supplied during this period is 13,36,708.670 m³ and total volume of IMFL produced is 2,88,232.926 m³. The water contained in IMFL (57.2%) is 1,64,869.234 m³ and therefore, volume of water used in production of GNS is 11,71,839.436 m³ (13,36,708.670 - 1,64,869.234). Thus, the percentage of water used in IMFL manufacture against total water supplied (Raw material) is 12.33% and the percentage of water used in GNS manufacture against total water supplied (Process) is 87.67%. However, the Respondent has failed to consider this distinction and levied water charges as Raw Material to full quantity of water supplied and the Petitioner has been burdened unreasonably with excess water charges amounting Rs. 18.39 crore.

15.0 The Petitioner further submitted that as per the Section 11 (d) of the MWRRRA Act, the MWRRRA has fixed BWT for domestic, industrial and agriculture water uses vide its Order dated 30/05/2011 and 11/01/2018. In addition, as per Section 31(1) of the MWRRRA Act, this Authority has issued MWRRRA (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Regulations, 2013. The BWT order expressly provides that it is only the manufacturing process of beverages (IMFL in Petitioner's case) that is deemed to use water as Raw Material and not the manufacture of ethanol or GNS. As per the above said Regulations of 2013, this Authority is vested with inherent power to direct Respondent to mandatorily comply with the provisions of BWT Order and to justify the basis of its classification.



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16.0 The Petitioner further relied upon final judgement of the Hon'ble High Court of Bombay at Aurangabad Bench in Writ Petition No. 4263 of 2005 dated 10/10/2008 (M/s Waluj Industrial Association Vs. State of Maharashtra. The law settled by the Hon'ble High Court is that water charges cannot be recovered from the manufacture of alcoholic beverages by assuming that the entire water supplied to it, is used as a Raw Material. The portion of water utilised for allied activities must attract different rate of water charges from the rate applicable to water used as a Raw Material. Therefore, in light of Hon'ble High Court's Order, the Respondent cannot apply uniform rates.

17.0 In addition, The Petitioner further relied upon the Hon'ble Supreme Court's Order in Tata Iron and Steel Company Ltd and Anr. Vs State of Bihar and Ors (2018) 12 SCC 107 that water charges are in nature of fees, whose levy is subject to Article 265 of the Constitution of India i.e. it cannot be levied without authority of law. The law does not empower the Respondent to apply the rate for water used as raw material to water, which has not been used as a raw material. Therefore, recovery of water charges made in this regard are clearly without authority of law and is liable to refunded to the Petitioner.

18.0 The Petitioner further submitted that the term "Raw Material" is defined neither in the MWRRA Act nor in the BWT Order. For this purpose, the Petitioner relied upon the decision of the Hon'ble Supreme Court in CST v Thomas Stephen and Co. Ltd (1988) 2 SCC 264 wherein the Hon'ble Supreme Court has made a fine distinction between "Raw Material" and "Consumable" stating that for any product to be termed as "Raw Material", it must be identifiable in the end product or must have been transformed into the end product. The Petitioner has also relied upon the various decisions of Hon'ble Supreme Court in Vanasthali Textiles Industries Ltd. v. CCE (2017) 12 SCC 115, Coastal Chemicals Ltd. v. CTO



(1999) 8 SCC 465 wherein Hon'ble Court has made a distinction between "Raw Material", "Components", "Sub-assembly" and "Consumable". Therefore, the water used in GNS manufacturing has been either consumed or recycled, it is not identifiable in the GNS itself, and so the water used in this process cannot be considered as "Raw Material".

19.0 In addition, the Petitioner relied upon the decision of the Hon'ble Supreme Court in HPL Chemicals Ltd. v. CCE (2006) 5 SCC 208 and Union of India v. Garware Nylons Ltd. (1996) 10 SCC 413 wherein the Hon'ble Court has held that the burden of proof in respect of classification is upon the Authority claiming a different classification. Therefore, the burden to prove that any quantity consumed by the Petitioner can be classified as "Raw Material" has not been discharged by the Respondent and so his position liable to be rejected.

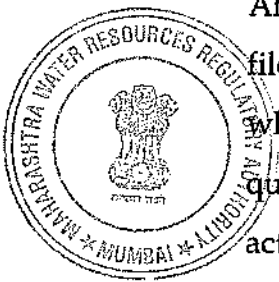
20.0 The Petitioner also relied upon the decision of the Hon'ble Supreme Court in Radhasoami Satsang, Saomi Bagh, Agra v. CIT (1992) 1 SCC 659 and Hon'ble High Court of Madras's decision in Commissioner of Service Tax v. Lumax Samlip Indus Ltd. 2007 (8) S.T.R. 113 (Mad) regarding principle of *res judicata*. In the present case, there is significant change in the law governing computation of water charges with effect from 01/02/2018 and the basis for assessment of water charges prior to this date has no bearing on assessments undertaken after the effective date of BWT Order. Hon'ble Court held that every assessment is a unit by itself and a separate cause of action in fiscal statue and remedy for each cause of action can be sought even if decision rendered on identical facts in earlier assessment periods. In light of the law declared by Hon'ble Court in above judgements, any previous position or conduct of the Petitioner in relation to levy of water charges will not enable the Respondent to forego strict compliance with the express conditions of the Tariff Order.



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21.0 As per the directions of the Authority, the Respondent has also filed his Affidavit in Reply dated 17/05/2022. The Respondent submitted that WRD vide its letter dated 10/01/1994 has given 0.655 Million cubic meter of water reservation to the Petitioner (then Oceanic Distilleries Pvt. Ltd.) for industrial use for manufacturing Malt Spirit. WRD, vide Government Resolution dated 24/10/2001, has divided industrial use rates into two parts i.e. water used for process and water used as raw material. The Petitioner has signed the agreement and water charges are levied and recovered as raw material from 16/10/2003. WRD, vide letter dated 28/04/2008, has stated that the water used in manufacturing alcohol in the liquor industry, the entire water should be treated as "Water used as Raw Material". In addition, as per this Authority's BWT Order dated 29/03/2022, industries using water as raw material are industries where water is consumed in final product and not earlier. Hence, it is not necessary to compute the required water at various stages as bifurcation is made based on type of industry and not internal use allocated / sanctioned use. Regarding Hon'ble High Court's Order in Writ Petition No. 4263 of 2005 dated 10/10/2008, the Petitioner should get the water sanction required for drinking and other purposes like cleaning, gardening etc. On approval, a revised agreement will be executed and that quantity of water will be charged from the date of agreement as per Column 5 of Annexure 3 of this Authority's BWT Order dated 29/03/2022.

22.0 The Authority conducted fourth hearing in the matter on 24/06/2022. After hearing both parties, the Authority directed the Respondents to file an Affidavit on Inspection Report of Petitioner Company to ascertain whether there is a separate infrastructure and the measuring devices to quantify water used for manufacturing GNS and IMFL and other allied activities. The Authority also directed the Petitioner to file an Affidavit



on applicability of WRD's letter dated 28/04/2008 and on Respondent's Inspection Report.

23.0 Accordingly, the Respondent has filed Affidavit in Reply dated 18/08/2022 and submitted that Respondent No. 1 has visited the Petitioner's company at Kadwa Mjalungi on 28/07/2022. The Petitioner has provided the line diagram of the pipeline supplying water to various departments of Company. However, the company is spread over a large area of 28 hectare and pipelines were laid underground. The Petitioner lifts water from Karanjwan Dam through Jackwell with water meter. The water then conveyed to Company premises through 10 Km pipeline and discharged into raw water tank unit. The water from tank unit distributed to three production units i.e. Distillery (GNS Production), Winery and Bottling (IMFL Production). While inspecting, it is not possible to identify the all pipelines supplying water for various purpose and not possible to quantify the water used for various activities.

24.0 The Authority conducted fifth hearing in the 03/11/2022 in the matter. During the hearing, the Petitioner filed written submission along with the Report of Independent Expert viz. JHV Associates. He submitted that as per the Report only 17.52% of the total water consumed should be charged as water used as "Raw Material". The Petitioner manufactures GNS and IMFL, which has 3.2% and 57.2% of water respectively. Regarding applicability of WRD's letter dated 28/04/2008, the Petitioner submitted that it does not empower any authority or department to levy water charges at the rate applicable to water used as "Raw Material" when the supplied water is not used as a raw material. However, it does not state that water used in the manufacture of intermediate product (i.e. GNS) or used or consumed in the industrial process can be regarded as water used in the form of "Raw Material" for IMFL. GNS and IMFL are both distinct marketable products. The



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Petitioner also relied upon the decision of the Hon'ble Supreme Court in Synthetics and Chemicals Ltd. v. State of U.P. 1990 (1) SCC 109 wherein a distinction between GNS/ethanol and IMFL is recognised on the basis of human consumption. Therefore, in the light of findings in the Independent Expert Report and decision of Hon'ble High Court in M/s Waluj matter, the Petitioner submits that the Respondents herein can recover water charges at higher rate only on 17.52% of total water consumed by classifying it as "Raw Material" and the rest has to be charged at lower rates having been used in "Process".

25.0 The Respondent submitted that the Petitioner is charged as water used as 'Raw Material' from the Year 2001 onwards as per the various Government Resolutions and the Authority's Bulk Water Tariff orders issued from time to time. The Respondent has also filed its say on Hon'ble High Court's Order in WP 4263 of 2005 dated 10/10/2008 vide affidavit dated 23/06/2022. Having heard the both parties in the matter, the Authority directed the Respondents to file an Affidavit on Independent Expert's Report submitted by the Petitioner.

26.0 Accordingly, the Respondent has filed Affidavit in reply dated 05/12/2022 and submitted that water is first and most important raw material for spirit manufacturing and there will be no fermentation without water. WRD, vide letter dated 28/04/2008, has clearly stated that water used as raw material in alcohol manufacturing and hence all water should be charged as raw material in liquor industry. Therefore, the Respondent is of view that there is no need to measure water quantity required at various stage while manufacturing spirit. Hence, Respondent does not agree with the Independent Expert's Report submitted by the Petitioner.

27.0 The Authority conducted sixth and final hearing on 11/01/2022. During the hearing, the Petitioner filed written submission and submitted that



the Respondent No. 1 has failed to provide any scientific evidence in support of the arbitrary levy of water charges by treating all water used by the Petitioner as "Raw Material". Therefore, the Petitioner has appointed JHV Associates, an independent expert agency to conduct the inspection and to ascertain the water usage at its premises. As per the said Report of JHV Associates, 17.52% of total water consumed by classifying it as "Raw Material" and the rest has to be charged at lower rates having been used in "Process". However, the Respondent, in its Affidavit, has vaguely stated that there is no need to measure water quantity required at various stage of manufacture, which is unfair and unreasonable even when it has not disputed fact or figures recorded in the Expert Report. The Respondent has acknowledged that break-up of water use shall enable the differential water tariff but could not make the necessary computation themselves. The Respondent has also incorrectly reproduced the direction contained in the judgement of Hon'ble High Court in M/s Waluj matter to deliberately obfuscate the issues involved in the present case. Regarding WRD's letter dated 28/04/2008, Petitioner submits that an instruction within Government is not binding upon this Authority while adjudicating the present petition and Respondent has erred in presuming that the said letter overrides the statutory mandate of the BWT order. Regarding Respondent's claim that there will not be fermentation without water, it is submitted that the GNS does not fall under the same category as beverages. Therefore, the use of water in GNS manufacturing cannot be presumed as "Raw Material".



28.0 The Respondent submitted that as per the industrial license given by the Central Government for manufacture of Malt Spirit from Barley, the Petitioner was given permission to lift 0.655 Mm³ water from Karanjwan Dam in January 1994 with one measuring device at lifting point. There is only one agreement with the Petitioner and it has not informed the

Respondent about different manufacturing units viz. GNS, IMFL and Winery. The Authority stated that the Respondent is charging as per the water use mentioned in the Agreement and if the Petitioner wants a bifurcation of rates, the agreement needs to be revised accordingly with separate infrastructure such as separate pipeline and measuring devices at the lifting point. The term "Allied Activities" in Hon'ble High Court's said Order is not defined. GNS is concentrated spirit and IMFL is a diluted spirit with flavours. Manufacturing a concentrate is not an "Allied Activities".

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

FRAMING OF ISSUES

30.0 This Authority, having considered the contentions made in the Appeal and 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 Petitioner - Industry should be charged for only 20% of the total water consumed as "Raw Material" and 80% of the total water consumed as "Process" as claimed by the Petitioner?



FINDINGS OF THE AUTHORITY

31.0 Before answering the above issues and in the light of the provisions contained in the relevant Acts, Government Resolutions and this Authority's Orders, the observations of the Authority are as follows;

- (a) The Petitioner 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) The Petitioner - industry is a licensed Distillery Company and is engaged in the business of manufacturing spirit/alcohol. WRD (then Irrigation Department) has sanctioned the Petitioner water quota of 0.655 Million cubic meter of water from Karanjwan Dam vide letter No. सी.डी.ऐ. १३९४/१८११/(३५७) ला.क्षे.वि.(पा.वा.कृ.) dated 10/01/1994.
- (c) The Petitioner (then Oceanic Distilleries Pvt. Ltd) and the Respondent entered into an agreement on 03/10/1997 to draw 14.41 lakh liters of water for the supply to processing of the Malt Spirit products for a term of 20 years. The agreement was renewed from time to time. As per the latest agreement signed by both parties on 28/06/2021, the Petitioner's sanctioned quota of 0.655 Million cubic meter of water is shown under "For industry using potable water bottling plant" and no quota against other water uses is shown.
- (d) As per the Water Resources Department's (then Irrigation Department) Government Resolution No. संकिर्ण १०००/(३२६/ २०००)/ सिंव्य (घो) , dated 29/05/2001 for water charges, the applicable rate for industrial water use from reservoir of Dam constructed on River



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was Rs. 9.90 per 10,000 liters from 01/07/1999 and Rs. 10.90 per 10,000 liters from 01/07/2000.

(e) The Water Resources Department (then Irrigation Department) vide Government Resolution No. पापद १००१/(५/२००१)/सिंव्य (घो), dated 24/10/2001 has sub-categorised industrial water rates into two types of industries i.e. Type - 1) पाण्याचा कच्चा माल म्हणून पेय जलाकरीता वापर होणाऱ्या [उदा. शितपेय, आसवनी [ब्रुअरीज] मिनरल वॉटर किंवा तत्सम पेयजलाकरीता] औद्योगिक वापरासाठी (Industries using water as "Raw Materials" for beverages like Cold drinks, Distilleries (Breweries), Mineral water or similar industries and Type - 2) पाण्याच्या औद्योगिक वापरासाठी [पेयजल इ. उद्योग वगळून] (Industries excluding beverage industries). As per Appendix 1 of said Government Resolution, the applicable rate from 01/09/2001 for industrial water use from reservoir of Dam constructed on River was Rs. 110.00 per 10,000 liters and from 01/07/2002, Rs. 125.00 per 10,000 liters and from 01/07/2003, Rs. 145.00 per 10,000 liters. The Respondent through his Affidavit has submitted that the Petitioner was charged as per the rates for industries sub-categorised under "Raw Materials" as per said Government Resolution dated 24/10/2001 from 01/09/2001.

(f) The Water Resources Department (then Irrigation Department) vide Government Resolution No. पापद २००६/(३९६ /०३)/ सिंव्य (घो), dated 31/07/2006 has revised the water rates. As per Appendix 1 of said Government Resolution, the applicable rate from 01/09/2001 for industrial water use from reservoir of Dam constructed on the River was Rs. 145.00 per 10,000 liters and from 01/09/2006, Rs. 170.00 per 10,000 liters and from 01/04/2007, Rs. 190.00 per 10,000 liters and from 01/04/2008, Rs. 220.00 per 10,000



liters and from 01/04/2009, Rs. 250.00 per 10,000 liters and from 01/04/2010, Rs. 290.00 per 10,000 liters.

- (g) 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 BWT 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 types of subcategories of industrial users viz. industries using water as "Raw Materials" (e.g. beverages) and industries using water as "Process" (cooling, washing, etc.) and the water charges @ per 10 m³ i.e. per 10,000 liters were fixed as stated below;

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/ unregulated rivers without even any K.T. weir or in unregulated river portion flowing within a command	16	80



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Sr. No.	Source of Supply	Process Industries	Industries using water as raw material
	area where there is no bandhara or K.T. weir		
4.	<u>Reservoir Constructed by the Water User Entity / User Entity</u> <u>Shared Proportional cost</u> 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	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.

- (h) The BWT fixed by this Authority vide the Order dated 30/05/2011, was extended from 2013 to January 2018. The applicable rate as per said BWT Order for the sub-category of industry using water as "Raw Material" was Rs. 160.00 per 10,000 liters from 15/10/2010.



- (i) This Authority reviewed and revised water charges under Section 11(u) of the MWRRRA Act, 2005 and issued BWT Order No. 01/2018 dated 11/01/2018. The water charges were applicable from February 2018 onwards. The water charges of Industries, under sub-category "Raw Material", were increased to 7.5 times in comparison to this Authority's earlier BWT Order dated 30/05/2011.
- (j) In the present Petition, the Petitioner approached this Authority and prayed for charging 20% of its water consumed as "Raw Materials" and the remaining 80% of its water consumed as "Process". However, it is evident from the records that the Petitioner had not approached the Bulk Water Supply Entity / Respondent after 24/10/2001 or this Authority after 30/05/2011 when industrial water rates were sub-categorised into two types of industries. It is also pertinent to note that the Petitioner had not raised any issue with the water charges levied & recovered by the Respondent till January 2018 and has not raised any objection for the entire water consumption being charged as "Raw Material".
- (k) The Petitioner has relied upon the Order of the Hon'ble High Court of Bombay at Aurangabad Bench in WP 4263 of 2005, M/s Waluj Industrial Association Vs. State of Maharashtra and other WPs dated 10/10/2008. However, this order is applicable only to the extent of allied activities for which water is used whereas the Petitioner industry has been using water in the manufacturing of GNS and IMFL. The main ingredients / raw materials of GNS are foodgrains and water. The GNS is manufactured by fermenting food grains and its manufacturing process involves Milling, Liquefaction, Fermentation, Distillation, Decanter, Dryer, Evaporation and Condensate Polishing Unit. During the



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liquefaction process, water is added to the foodgrain flour as a solvent. The main ingredients / raw materials of IMFL are GNS and water. Thus, it is evident that water is one of the main ingredients in the manufacturing of GNS and IMFL. Petitioner's case is not the bifurcation of main industrial activity and allied activity but the amount of water consumed in the main industry.

(l) The Petitioner has relied upon the various decisions of the Hon'ble Supreme Court regarding the definition of "Raw Material". However, this Authority's BWT Orders sub-categorise types of industries. The term "Raw Material" is used for water used in the industries viz. Bottled water plants, Cold drinks, Spirit, Alcohol, Ethanol, Breweries and Distilleries or similar industries. The same categorisation is seen in all earlier Government Resolutions from the Year 2001.

(m) The Petitioner has also relied upon the decision of the Hon'ble Supreme Court regarding principle of "Burden of Proof". The Petitioner's submission that it is the responsibility of the Respondent to prove that the whole water supplied to the Petitioner is "Raw Material". The Authority is of the opinion that this contention is misconceived. In this case, there are explicit agreements as to the amount of water being supplied to this category of industry. It is evident from the records that the Petitioner is charged as per the various Government Resolutions and this Authority's Order issued from time to time and as per the agreements between the parties.

(n) This Authority, as mentioned under Section 11(d) of the MWRRA Act 2005, has fixed the BWT for mainly for three categories of bulk water users viz. Agriculture, Domestic and Industrial. The industrial water charges, by this Authority's BWT Orders, are



based on types of industries and not the actual consumption in the actual process in this type of industry (Distillery) as being claimed by the Petitioner. Further, the content percentage of water in the final product is not the consideration in the BWT Orders. Tariff is not determined by such principle.

32.0 After giving due consideration to the pleadings, submissions and evidence on record, 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 Petitioner had approached this Authority through Petition dated 23/07/2019 under Section 13 of the MWRRRA Act, 2005.
- b) Section 13 of the MWRRRA Act, 2005 is about powers of Authority as vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of certain matters.
- c) As per Section 22 of the MWRRRA 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 MWRRRA'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



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decision of the Authority as regards to this shall be final and binding."

- e) The subject matter of the present Petition is related to the difficulty in Bulk Water Tariff Order. Therefore, this Authority has jurisdiction to adjudicate the present matter under Para 15.0 of the MWRRA's BWT Order No. 01/2018.

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

- (ii) Whether the Petitioner - Industry should be charged for only 20% of the total water consumed as "Raw Material" and 80% of the total water consumed as "Process" as claimed by the Petitioner?**

- a) The Petitioner (then Oceanic Distilleries Pvt. Ltd) entered into an agreement with Respondent No. 1 in October 1997 to lift 0.655 Million cubic meter of water from Karanjwan Dam for manufacturing Malt Spirit. The agreement was for 20 years, which was renewed from time to time. The latest agreement was signed on 28/06/2021 for the period of six years commencing from 01/11/2020 to 31/10/2026. The agreement clearly states that 0.655 Million Cubic Meter of water is a sanctioned quantity and the said quantity is shown against "For industry using potable water bottling plant" i.e. industries using water as "Raw Materials". There is no bifurcation of sanctioned quota in the agreement between the two types of units - GNS and IMFL, as claimed by the Petitioner in the present matter.
- b) Water Resources Department (then Irrigation Department) vide Government Resolution No. संकिर्ण २००२/(१४८/२००२)/सिंव्य (घो),



dated 28/11/2002 has sub-categorised industrial water rates into two types of industries i.e. Type - 1) पाण्याचा कच्चा माल म्हणून पेय जलाकरीता वापर होणाऱ्या औद्योगिक वापरासाठी [उदा. शितपेय, आसवनी [ब्रुअरीज] मिनरल वॉटर किंवा तत्सम पेयजलाकरीता] (Industries using water as "Raw Materials" for beverages like Cold drinks, Distilleries (Breweries), Mineral water or similar industries and Type - 2) पाण्याच्या औद्योगिक वापरासाठी [पेयजल इ. उद्योग वगळून] (Industries excluding beverage industries). The rate for Industries using water as "Raw Materials" for beverages was about five times higher than the Industries excluding beverage industries.

- c) The above sub-categorisation of industries and the principle envisaged for the levy of water charges are further continued in Water Resources Department's Government Resolution No. पापद २००६/(३९६/०३)/सिच्य (धो), dated 31/07/2006.
- d) Chief Engineer, North Maharashtra Region, WRD, Nashik vide letter dated 18/03/2008 has raised a query in the matter and WRD, Mantralaya, Mumbai vide letter No. BKS 2005/(183/2006)/IM(P) dated 28/04/2008 has clarified that similar industries, mentioned in Appendix No. 1 of the said Government Resolutions include liquor manufacturing industries. As water used in the industry manufacturing liquor, then those industries water use should be considered as industries using water as raw materials and charged as per Appendix No. 1 of the said Government Resolutions.
- e) This Authority had also used the same sub-categorisation of industries and the principle in its first BWT Order letter No. MWRRRA 2011/ BWT-Order/(59)/315 dated 30/05/2011.



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- f) This Authority, vide its Second BWT Order No. 01/2018 dated 11/01/2018, had revised BWT and used the same sub-categorisation of industries. As per Note 2 of Annexure No. 3 of the above said this Authority's Order, Industries using water as "Raw Materials" means those industries manufacturing cold drinks, distillery (brewery), mineral water, or of a similar kind.
- g) This Authority, in its third BWT Order dated 29/03/2022, has followed the same sub-categorisation of industries and also fixed the water charges for Domestic use in Industrial units. The Authority, in the said BWT Order, has clarified that the term "Raw Material Industries" means water used in final product as consumptive use such as e.g. Bottled water plants, Cold drinks, Spirit, Alcohol, Ethanol, Breweries and Distilleries or similar industries.
- h) In all the above Government Resolutions and this Authority's Order, the water charges for industrial water use are sub-categorised into two types of industries and not based on actual water use in the process of a particular industry or on the basis of water content in the end product. In the first type of industries, the water charges is prescribed for industries excluding industries which are falling under the sub-category of industries using water as "Raw Materials" and in the second type of industries, the water charges is fixed for those industries using water as "Raw Materials" for Bottled water plants, Cold drinks, Spirit, Alcohol, Ethanol, Breweries and Distilleries or similar industries (inclusive list of specific industry - type in beverages, spirit, alcohol manufacturing, ethanol etc.).
- i) Both the licenses of the Petitioner are issued by the Commissioner of the State Excise of Maharashtra and the



license is for 'Constructing and Working a Distillery for the Manufacture of Spirit'. Therefore, the entire water lifted from the Karanjwan Dam is liable to be charged under Industries using water as "Raw Material".

Thus, the issue is answered in negative.

Order

33.0 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 Petitioner's entire water consumed is liable to be charged under the sub-category of Industries using water as "Raw Material".

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

Delivered on March 29, 2023.

Sd/-

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

Sd/-

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

Sd/-

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



Sd/-

(Dr. Sanjay Chahande)
Chairperson



(Dr. Ramnath Sonawane)
Secretary

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