



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

File No : MWRRA/2018/Legal/Case No.22(2018)/310

Date : 03/05/2023

Case No. 22 of 2018


In The Matter of

An Appeal filed by Hindustan Coca-Cola Beverages Pvt. Ltd, Village Pirangut, Taluka Mulshi, District Pune, regarding impugned Order of Superintending Engineer, Pune Irrigation Circle, Pune dated 29/09/2018

Please find enclosed herewith a copy of MWRRA Order No. 02/2023 dated 03/05/2023 in the above matter.

Encl : As above



  
(Dr. Ramnath Sonawane)  
Secretary, MWRRA

Copy for information and necessary action to :-

1. Hindustan Coca-Cola Beverages Pvt. Ltd, Village Pirangut, Taluka Mulshi, District Pune through Adv. Sachin R. Sharma, 21/22, Free Press Journal Road, 215 Nariman Point, Mumbai- 400021 (Appellant)
2. Superintending Engineer, Pune Irrigation Circle, Shinchon Bhavan Mangalwar Peth, Pune - 411011 (Respondent)
3. Executive Engineer, Pune Irrigation Division, New Administrative Building, D - Wing, West Side, 2<sup>nd</sup> Floor, Pune - 411001.



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**Maharashtra Water Resources Regulatory Authority**

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



**ORDER NO. 02/2023**

(Case No 22 of 2018)

**In The Matter of**

**An Appeal filed by Hindustan Coca-Cola Beverages Pvt. Ltd,  
Village Pirangut, Taluka Mulshi, District Pune, regarding  
impugned Order of Superintending Engineer, Pune Irrigation  
Circle, Pune dated 29/09/2018**

Hindustan Coca-Cola Beverages Pvt. Ltd.  
Having its manufacturing plant at,  
Plot No. 1105/7/8/33,  
Village Pirangut, Taluka Mulshi,  
District Pune - 412108

.....Appellant

**Versus**

Deputy Superintending Engineer,  
Pune Irrigation Division,  
Sinchan Bhavan, Mangalwar Peth,  
Pune - 411 011.

.....Respondent



*[Handwritten Signature]*

Mr. Amit Jamsandekar along with Mr. Sidhartha Srivastava, Advocate for the Appellant

Mr. Sanjeev Chopade, Superintending Engineer, Pune Irrigation Circle, Pune along with Mr. Rajendra Dhodapkar, Executive Engineer, Pune Irrigation Division, Pune 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 : May 03, 2023

- 1.0 Hindustan Coca-Cola Beverages Pvt. Ltd (Appellant) filed an Appeal on 27/11/2018 under Section 22 of the Maharashtra Water Resource Regulatory Authority (MWRRA) Act, 2005 read with MWRRA (Conduct of Business) Regulations, 2013 in the matter of impugned Order of Superintending Engineer, Pune Irrigation Circle, Pune dated 29/09/2018.
- 2.0 The Appellant is a Company, registered under the Companies Act 1956, engaged in the business of manufacturing and sale of sweetened carbonated water, carbonated water, fruit-based drinks and packaged drinking water e.g. Coca-Cola, Sprite, Limca, Maaza, Thumps Up, Kinley packaged drinking water, Kinley Soda, etc.
- 3.0 The Appellant submitted that it draws water from two sources i.e. Mula River and a well situated within 35 meters from the Urawade Nala. The Appellant has signed an agreement with the Executive Engineer, Pune Irrigation Division (EE, PID), Pune for drawing 0.306 Million Cubic Meter (Mcum) of water from Mula River on 01/08/2014 for period of six years. The Appellant has also signed an agreement with EE, PID, Pune for lifting 0.150 Mcum of water from a well near Urawade Nala on 21/09/2015 for a period of six years. The Appellant has at their own cost laid a pipeline for drawing water from the Mula River and well.



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4.0 The MWRRA, vide its Order No. 01/2018 dated 11/01/2018, has fixed Bulk Water Tariffs (BWT) for domestic, industrial and agricultural users and as per the Annexure 3 of the said Order, the Authority has bifurcated industrial rates into separate tariff heads i.e. Process & Raw Material. The Appellant has received a bill for the Month of February 2018 without any bifurcation and the entire water use was charged at the highest rate i.e. for "Raw Material". The Respondent has also charged the Appellant under the category "Regulated water supply with conveyance loss" for both sources instead of "Assured water supply".

5.0 The Appellant, being aggrieved, has filed a representation dated 31/03/2018 before the Respondent requesting to issue fresh water bills as the water bills raised by the Respondent are arbitrary and contrary to the BWT Order. The Appellant has also requested the Respondent to visit their recycling facility in the Appellant's plant to claim the 25% rebate / incentive under BWT Order. Accordingly, a hearing was scheduled on 10/04/2018 before the Respondent and as per the recommendation of the Respondent, the Appellant applied for amendment of the Original Sanction Order on 10/05/2018. The Appellant requested that water sanctions should be bifurcated into "Process", "Raw Material" and "Domestic" as per actual use. As the Appellant has reduced its water utilisation ratio for manufacturing 1 liter of carbonated soft drink, they are entitle for rebate of 25%. The Maharashtra Pollution Control Board has also given bifurcation of permissible quantity of water used by the Appellant as raw material for beverage, process and domestic purpose on 16/10/2018.

6.0 As there was no communication from the Respondent, the Appellant visited the Respondent's Office on 22/10/2018 and shocked to receive Respondent's impugned Order dated 29/09/2018. The Respondent, in the said Order, stated that as the Appellant's net demand of water is not upto limit of 75%, concessional rate cannot be applicable and as per the Note 2 of Annexure 3 of BWT Order, independent rate cannot be applied for water use for process and raw material.

7.0 The Appellant has relied upon the judgement of Hon'ble Bombay High Court in the matter of Waluj Industries and Ors v. State of Maharashtra and Ors. Writ Petition 4263 of 2005 and in the matter of Pepsico India



Holding Pvt. Ltd v. State of Maharashtra and Ors. Writ Petition 5834 of 2005. The Hon'ble Supreme Court, vide its Order dated 12/09/2011 in Civil Appeal No. 7780 of 2011, has upheld the directions given in Writ Petition 5834 of 2005, making levy of differential water tariff as per type of use.

8.0 The Appellant submitted that the impugned Order passed in a flagrant violation of the established principle of law, principles of natural justice, equity and fairness. The impugned Order is a non-speaking, passed without application of mind and without giving the Appellant any opportunity of being heard in the matter. The impugned Order entails serious consequences and intolerable financial burden on the Appellant. Therefore, the Appellant has filed the present appeal under Section 22(3) of the MWRRA Act, 2005.

9.0 The Appellant, through its Petition has prayed for the following reliefs:

- a. *That the impugned Order dated 29<sup>th</sup> September passed by the Respondent be quashed and set aside.*
- b. *That the Respondent be directed to bifurcate the water use of the Appellant's into process, raw material and domestic as per the amended content to operate and to give effect to this relief from 1<sup>st</sup> February, 2018 i.e. from the effective date of the Tariff Order.*
- c. *That the Respondent be directed to refund all the excess amount paid by the Appellant's against the water charges under protest since 1<sup>st</sup> Feb, 2018.*
- d. *That the Respondent be directed to verify and pass on the incentive/ rebate under the Tariff order after ascertaining the water requirements of the Appellant's Plant vis a vis the Industrial Water Usage Benchmark.*
- e. *That the Respondent be directed to revise our Category of Water Supply under the Tariff Order, from "Regulated Water Supply with Conveyance Loss" to assured supply, as applicable since 1<sup>st</sup> February, 2018.*
- f. *That the Respondent be directed to refund the excessive amount charged since 1<sup>st</sup> February, 2018 due to the non-bifurcation and or incentive as provided in the Tariff Order.*
- g. *That pending the hearing and final disposal of this Appeal, the impugned order be stayed and the Respondent be restrained by an order and injunction*



*[Handwritten signature]*



*of this Hon'ble Authority, from taking any steps, in any manner, under or in furtherance or pursuance thereof.*

- h. That pending final disposal of the Appeal, the Respondent be directed to raise water Bills bifurcating as per Tariff order since 1<sup>st</sup> February, 2018.*
- i. For ad-interim reliefs in terms of prayer (c) and (d) above.*
- j. That the costs of this Appeal be provided for.*
- k. For such further and other relief as the nature and circumstances of the case may require and thought fit by this Hon'ble Authority.*

10.0 After Appellant filed the Petition on 30/11/2018, the Authority has scrutinised the Petition and the Authority, vide letter dated 18/12/2018, had directed Respondents to file a para-wise Affidavit in Reply on or before 31/12/2018. Accordingly, Respondent - Superintending Engineer, Pune Irrigation Circle, Pune has submitted parawise comment on 14/01/2019 and submitted that the actions were taken as per the provisions in the agreement between Appellant and Respondent, this Authority's BWT Order No. 01/2018 dated 11/01/2018 and this Authority's Order dated 22/09/2017 regarding "Criteria for distribution of surface water entitlements by river basin agencies for domestic and industrial uses".

11.0 The Authority has conducted first hearing in the matter on 14/02/2019. During the hearing, the Appellant briefed the matter and stated that main core issue of the present matter is about water charging. The Authority pointed out that as per the clause 12 (b) of the Agreement, about disputes regarding quantity of water, billed or rates at which bill is prepared, the decision of Superintending Engineer, Pune Irrigation Circle, Pune's shall be final. The Appellant cannot come in Appeal under Section 22(3) of the MWRRRA Act, 2005 against the said decision of Superintending Engineer, Pune Irrigation Circle, Pune as he is not a Primary Dispute Resolution Officer (PDRO) as per the Water Resources Department's (WRD) Government Resolution dated 25/08/2009. The Authority directed Superintending Engineer, Pune Irrigation Circle, Pune to reply Appellant's Application dated 10/05/2018, give Speaking Order and schedule visit to Appellant's manufacturing plant to verify the reduction in demand by recycling. The Appellant was given liberty to amend the present Appeal.



12.0 As per the directions given during the hearing, Executive Engineer, Pune Irrigation Division, Pune has filed an Affidavit on behalf of Respondent dated 18/04/2019. The Respondent submitted that the Appellant is receiving water from two sources viz. from Mula River near Ambadvet Kolhapur Type Weir and a well near Urawade Nalla. Tata Power Company's Mulshi Dam on Mula River is on the upstream side of Ambadvet Kolhapur Type Weir. The water is released regularly from Mulshi Dam into Mula River, which is stored in series of Kolhapur Type Weirs for irrigation and non-irrigation purpose. Therefore, the Appellant is charged as per Sr.-No. 2 of Appendix 3 of this Authority's BWT Order No. 01/2018 dated 11/01/2018.

13.0 The Respondent further submitted that regarding source of Urawade, water is released from Urawade Minor Irrigation Tank into Urawade Nalla as and when the farmers raise irrigation demand. Due to this release of water, all the wells in the vicinity of Nalla are recharged with water. In addition, the said well of the Appellant is within the 35 meters of Nalla. Therefore, the Appellant is charged as per Para 4.2 and Sr. No. 2 of Appendix 3 of this Authority's BWT Order No. 01/2018 dated 11/01/2018. The Appellant Company is manufacturing Cold Drinks and allied products and hence their water is used as raw material as per of this Authority's BWT Order No. 01/2018 dated 11/01/2018. The industrial rates, since 2001, are classified as process water and water used as raw material. The Respondent was raising the bills for water consumption under the category of "Raw Material" from 2001 onwards and the Appellant was paying the bills without raising any complaints till 11/01/2018.

14.0 Regarding rebate for recycling, the Respondent submitted that Officers of Respondent visited the Appellant Company's premises on 06/10/2017. The Respondent asked the Appellant about tax proofs about their production to ascertain their water use, but the Appellant failed to submit the details. The Respondent has visited the Appellant Company's premises again on 02/03/2019 and asked to submit documents to substantiate their demand. However, the Appellant has given incomplete submission and not provided any valid Government documents such as Sales Tax or GST bills mentioning their products, quantities to prove that their water consumption is reduced to 75% by



recycling. Therefore, the Appellant is not entitled for any rebate as per this Authority's BWT Order No. 01/2018 dated 11/01/2018.

15.0 The Appellant, as per the directions given during the hearing, has filed a Rejoinder dated 16/07/2019 on the Respondent's Affidavit in Reply dated 18/04/2019. The Appellant has submitted that the Superintending Engineer's impugned Order dated 29/09/2018 is neither speaking order nor in the line with the judicious principle of natural justice. Regarding Mula (Mulshi) Dam, the Appellant is only an incidental user of water from Mula River. As water is not specifically released by the Respondent for the Appellant in any form or manner, the categorization of Appellant in "Regulated supply with conveyance loss" is not only incorrect and baseless but also unjust and unfair. The documents sought was handed over to the Respondent under Appellant's letter dated 22/03/2019. The Respondent has not provided bifurcation of the bill in respect of the water usage of the Applicant.

16.0 The Authority conducted the second hearing in the matter on 06/02/2020. During the hearing, the Appellant submitted that the Respondent has visited the Appellant's site on 02/03/2019 but did not issue speaking order. Due to this, the Appellant was unable to amend present Appeal. The Authority stated that the Appeal is for interpretation of Tariff Order and set few issues for adjudication of the matter. The Authority also directed Respondent to give Speaking Order and the Appellant may file Rejoinder.

17.0 Accordingly, the Respondent - Superintending Engineer, Pune Irrigation Circle, Pune has issued a speaking order dated 13/02/2020. The Respondent stated that the Appellant's water quota was sanctioned for industrial water use for "Raw Material". As per the foot note 2 of Annexure 3 of this Authority's BWT Order No. 01/2018 dated 11/01/2018, the Appellant industry falls under industry using water as "Raw Material", the separate rate for process and raw material cannot be applied. Regarding Appellant's proposal for bifurcation of its water use, the said proposal was submitted to Maharashtra Krishna Valley Development Corporation office for policy decision. Regarding rebate in water rates, as the Appellant did not submit the requisite documents, the rebate in water rates cannot be given at present.



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18.0 The Appellant vide letter dated 04/03/2020 has submitted the Amendment to the Appeal. The Appellant submitted that the Respondent issued belated impugned speaking order on 13/02/2020 after this Authority's directions were given on 14/02/2019. It is apparent that the Respondent did not consider the Appellant's representation. This clearly shows the non-application of the mind of the Respondent. The impugned order is gross violation of MWRRA Act, 2005 and is contrary to this Authority's BWT Order No. 01/2018 dated 11/01/2018. Regarding, Respondent's refutation against Appellant's bifurcation request, the Appellant submitted that the agreements were signed prior to revised tariff order and it cannot treat the water actually used for process and domestic use as raw material use without any reason, justification and basis.

19.0 The Appellant further submitted that if the said footnote - 2 of this Authority's BWT Order is challenged, it would be incapable of passing the test of reasonableness and rationality. The carving out of these particular industries is not supported by any material/explanation / report and the same is not justified on some rational and clearly discriminatory in nature. Water resources in such industries is mainly used for manufacturing and production activities but further has a wide range of application in other allied activities. The Appellant has made application for amendment of original sanction on 10/05/2018 but the same is pending since then and the Appellant is burdened with paying higher water charges.

20.0 The Appellant had inadvertently included the water used for domestic purpose in its representation dated 31/03/2018 while arriving at the figure of 1.58 liters of water per 1 liter of beverage. The Appellant had furnished the clarification on 11/09/2018, which showed corrected figure of 1.41 liters of water per 1 liter of beverage and falls under the threshold of 75% of the industry standards. The Appellant further submitted that, the Appellant is entitled to the incentive rate as claimed. However, the Respondent did not consider this, which shows complete non-application of mind.

21.0 The Appellant has also filed a Rejoinder dated 11/03/2020 in response to the Respondent's Order dated 13/02/2020. The Appellant submitted



*[Handwritten signature]*



that the said Order discloses a clear non-application of mind in interpreting the BWT Order dated 11/01/2018 and is unreasonable, unjustified and arbitrary. The said Order is contrary to the BWT Order dated 11/01/2018 and MWRRA Act, 2005. The Appellant submitted that the Respondent has misconstrued and misinterpreted BWT Order dated 11/01/2018 and therefore, the Appellant is entitled to get a relief to remove this difficulty from this Authority.

22.0 The Authority scheduled next hearing in the matter on 04/03/2020, but was postponed as per the request of the Appellant. Further, due to COVID-19 pandemic lockdown, the hearing could not be conducted in the matter. Meanwhile, due to end of tenure, the posts of Chairperson and Members became vacant in January 2021. The State Government has filled the posts of Members one by one by December 2021 and then the Authority started conducting pending hearings.

23.0 The Authority conducted third hearing in the matter on 04/08/2022. During the hearing, the Appellant submitted that the decision of bifurcation water quota into process, raw & domestic use is pending before Executive Director, Maharashtra Krishna Valley Development Corporation, Pune. The Appellant has given all relevant documents / data to the Respondent for a rebate in tariff. The Respondent submitted that the issue of bifurcation water quota is referred to the State Government. As per the various orders of the State Government & this Authority, the Appellant is charged as industry using water as raw material and the Appellant was paying accordingly. There was no dispute till water rates increased in January 2018. The Authority directed the State Government / Respondent should take appropriate decision on the Appellant's request for bifurcation of sanctioned quota and file the Affidavit accordingly.

24.0 The next hearing in the matter was scheduled on 15/09/2022 but was adjourned as per the request of the Respondent. The fourth hearing in the matter was scheduled on 17/11/2022. During the hearing, the Respondent submitted the status of the Appellant's request for bifurcation of sanctioned quota and the decision is still pending. The Authority directed the Respondent should take an appropriate decision on the Appellant's request and file an Affidavit.



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25.0 As per the directions given in the hearing, the Respondent - Executive Engineer, Pune Irrigation Division, Pune, has filed an Affidavit dated 17/11/2022. The Respondent submitted the various communication made regarding the Appellant's request for bifurcation of sanctioned quota and accordingly, Chief Engineer (WR), WRD, Pune, vide Memorandum letter No. CE(ID)/EE-2/DE-3/PB-8/(25/2022)/ 5733 and 5734 dated 17/11/2022, has given sanction for quota bifurcation. He further submitted that State Government sanctioned the quota for the Appellant as an industry using water as raw material in 2006. The Company has no objection about rates and paid regular bills as proposed by the Respondent. However, after the issuance of the BWT Order dated 11/01/2018, the Appellant claimed the bifurcation and paid bills under protest from 2018 till date.

26.0 The Authority conducted the fifth hearing in the matter on 01/12/2022. During the hearing, the Appellant has submitted that the Appellant agrees with the bifurcation given and will be entered into the agreement with the Respondent. Regarding rebate in tariff for recycling and reuse of water and source classification, the Appellant will discuss these issues with the Respondent. In reply, the Respondent submitted that as the Appellant's main prayer is answered and Superintending Engineer, Pune Irrigation Circle, Pune vide his speaking order dated 13/02/2020, has already decided the remaining issues. Therefore, the present appeal needs to be disposed of. The Authority stated that as per this Authority's BWT Order of 2018, the concerned Executive Engineer is empowered to decide the matter regarding rebate in tariff for recycle & reuse and source classification. The Authority directed both parties to resolve other disputed issues amicably and file affidavits accordingly.

27.0 The Authority conducted the sixth hearing in the matter on 09/02/2023. During the hearing, the Appellant has filed an adjournment application of the present hearing and submitted that the parties are in the process of mutually deciding the nearest dates to negotiate, discuss and draft appropriate clauses in the draft agreement. The Respondent - Executive Engineer, Pune Irrigation Division, Pune, has filed an Affidavit dated 09/02/2023. The Respondent submitted that despite the Letter of Intent issued, the Appellant has not initiated the revision of the agreement. The Respondent neither has received the communication regarding other



disputed issues nor was any representative of the Appellant present. He further submitted that as all prayers of the Appellant have been resolved, there is no need for adjournment and requested that the Authority may close the matter for order. The Authority adjourned the hearing for two weeks.

28.0 The Authority conducted the seventh and final hearing in the matter on 22/02/2023. During the hearing, the Appellant submitted that the quota bifurcation issue is already resolved but in the meantime, some other issues cropped up. The Authority stated that these issues could be resolved by both parties as per the agreement and the water charging done as per actual. If parties did not agree, penal charges could be levied as per this Authority's BWT Order.

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 Appellant - Industry's lifting source should be categorised under 'Regulated Water Supply with Conveyance Losses'?
- (iii) Whether the Appellant - Industry should be charged as Industry using water as 'Raw Material'?
- (iv) Whether the Appellant - Industry is entitled to a 25% rebate as per Para 5.1 of Annexure 3 of the Bulk Water Tariff Order of this Authority dated 11/01/2018 ?



*[Handwritten signature]*



## 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 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) The Appellant - industry is a licensed Company and is engaged in the business of manufacturing and sale of sweetened carbonated water, carbonated water, fruit-based drinks and packaged drinking water. Chief Engineer, WRD (then Irrigation Department), Pune has sanctioned the Appellant (then Britco Foods Company Ltd.) industrial water quota of 0.150 Million cubic meter (Mcum) of water from private owned well within 35 meters from Urawade Nala vide Memorandum letter No. सिचन/ काअ-२/६८२९/५१०६ dated 23/08/1999. The present agreement signed by both parties on 21/09/2015, the Appellant's sanctioned quota of 0.150 Mcum of water is shown under "For industry using potable water bottling" and no quota against other water uses is shown.
- (c) The Appellant was also given additional industrial water quota of 0.306 Mcum of water from Ambadwet Kohapur Type (KT) weir on Mula River for beverage industrial water use (Raw Materail) vide Memorandum letter No. मुअ/काअ-२/मुदका/ ७१६७ /६०२२ dated 12/09/2006. As per the latest agreement signed by both parties on 01/08/2014, the Appellant's sanctioned quota of 0.306 Mcum of water is shown under "For industry using potable water bottling" and no quota against other water uses is shown.

- (d) The Section 56 of the Maharashtra Irrigation Act, 1976, as amended from time to time, reads as follow;

56. (1) *Water used for purposes other than those of irrigation from any natural stream or artificial drain receiving percolation water from a canal shall be charged a water-rate not exceeding that as would ordinarily have been charged if the supply had been made from the canal for such*



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*purposes; and water used for such purposes from a well situated on either side of a canal, within a distance of 35 metres from the nearest boundary canal shall be charged a water rate not exceeding one-half of such rate, as may be determined by the Appropriate Authority.*

*(2) The provisions of sub-section (1) shall not apply to water from such stream, drain or well used exclusively for domestic purposes by the residents of any village.*

(e) WRD (then Irrigation Department) vide Government Resolution No. संकिर्ण १०९६/४१८/सिब्य (घो), dated 28/08/1998 has revised water rates for drinking and industrial water supply and fixed yearly water rates from 01/07/1998 onwards.

(f) WRD (then Irrigation Department) vide Government Resolution No. पापद १००१/(५/२००१)/सिब्य (घो), dated 24/10/2001 and Corrigendum - Government Resolution No. संकिर्ण २००२ (१४८/ २००२) / सिब्य (घो), dated 28/11/2002 has again revised water rates for drinking and industrial water supply and fixed yearly water rates from 01/09/2001 onwards. However, WRD, vide these Government Resolutions, 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 means those manufacturing 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). But, there was no provision of levying water rates for non-irrigation water use i.e. for drinking and industrial water supply from wells.

(g) WRD (then Irrigation Department) vide Government Resolution No. संकिर्ण २००२/(४६०/२००२)/सिब्य (घो), dated 09/05/2003 has directed to levy half water rates for industrial water use from wells within 35 meters of nearest border of canal as per Section 56 of the Maharashtra Irrigation Act, 1976.



*[Handwritten signature]*



- (h) The Water Resources Department (the then Irrigation Department) vide Government Resolution No. पापद २००६/(३९६ /०३) /सिव्य (घो), dated 31/07/2006 has revised the water rates for drinking and industrial water supply and fixed yearly water rates from 01/09/2006 onwards.
- (i) 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 m<sup>3</sup> 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 - Major/ Medium reservoir/ storage tank without canal</u>	32	160
2.	<u>Regulated Water Supply with Transmission Loss - Regulated river portion below dam/canal lift / K.T. weir with back up reservoir / tail race from reservoir</u>	64	320
3.	<u>Partly Assured Water Supply - 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 area where there is no bandhara or K.T. weir</u>	16	80
4.	<u>Reservoir Constructed by the Water User Entity / User Entity Shared</u> <u>Proportional cost - Water user agency</u>	10.7	53.5



Sr. No.	Source of Supply	Process Industries	Industries using water as raw material
	(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		

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 15<sup>th</sup> November and 31<sup>st</sup> March. The corresponding rates in the season between July to October, except in Konkan and Vidarbha where it will extend to 15<sup>th</sup> Nov., will be 50% of the basic rate and in the season between 1<sup>st</sup> March to 30<sup>th</sup> June, except in Konkan and Vidarbha where it will be from 1<sup>st</sup> April to 30<sup>th</sup> 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.

(j) The BWT fixed by this Authority vide the Order dated 30/05/2011, was extended from 2013 to January 2018. This Authority has reviewed and revised water charges under Section 11(u) of the MWRRA 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.

(k) Being aggrieved by this rise in rates, the Appellant might have approached this Authority. However, it is evident from the records that the Appellant had not approached the Bulk Water Supply Entity / Respondent after 24/10/2001 or this Authority after 30/05/2011 when industrial water uses were sub-categorised into two types of industries. It is also pertinent to note that the Appellant has 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".





- (l) The Appellant 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. The Hon'ble High Court directed that water used as raw material in manufacturing activity should be charged at higher rates and water which is not used as raw material in manufacturing activity should be charged at normal rates. The Appellant is a "Beverage Company" and the water is one of the main raw material in manufacturing of sweetened carbonated water, carbonated water, fruit-based drinks and packaged drinking water.
- (m) The Appellant has also relied upon the Order of the Hon'ble High Court of Bombay in WP 5834 of 2005, Pepsico India Holdings Pvt Ltd Vs. State of Maharashtra and other WPs dated 04/11/2009 and the Order of the Hon'ble Supreme Court in CA 7780 of 2011, Pepsico India Holdings Pvt Ltd Vs. State of Maharashtra dated 12/09/2011. The Hon'ble High Court directed that the documentary evidence should be submitted for water which is used as raw-material and water used for allied activities and it should be charged as per directions given in WP 4263 of 2005. As stated above, undoubtedly, the water is the main raw material in Appellant's Beverage Company. The Order of the Hon'ble Supreme Court mainly deals with the retrospective assessment and levy charges and the Hon'ble Court has dismissed the said Appeal as there was no merit.
- (n) This Authority, as mandated 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 BWT is fixed after ascertaining the views of beneficiary public. The industrial water charges, fixed vide various Government Resolutions and by this Authority's BWT Orders, are based on types of industries and not internal water use of a particular industry or on the basis of water contents in the end product.



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32.0 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 has approached this Authority through Petition dated 27/11/2018 under Section 22 of the MWRRA Act, 2005. The Appellant has mainly prayed to quash and set aside impugned Order of Superintending Engineer, Pune Irrigation Circle, Pune dated 29/09/2018.
- b) 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 an appeal under Section 22 of the MWRRA Act, 2005 against the Order of PDRO.
- c) Superintending Engineer, Pune Irrigation Circle, Pune is not the PDRO in the present matter. Further, as per the clause 12 (b) of the Agreement, about disputes regarding quantity of water billed or rates at which bill is prepared, the decision of Superintending Engineer, Pune Irrigation Circle, Pune's shall be final and binding on the Appellant.
- 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 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.

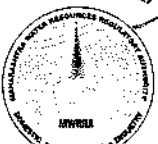


(ii) Whether the Appellant - Industry's lifting source should be categorised under 'Regulated Water Supply with Conveyance Losses'?

- a) The Appellant (then Britco Foods Company Ltd.) was sanctioned industrial water quota of 0.150 Million cubic meter (Mcum) of water from private owned well within 35 meters from Urawade Nala by Chief Engineer, WRD (then Irrigation Department), Pune vide Memorandum letter No. सिंचन/ काअ-2/6829/5106 dated 23/08/1999.
- b) The Appellant was also given additional industrial water quota of 0.306 Mcum of water from Ambadwet Kohapur Type (KT) weir on Mula River for beverage industrial water use (Raw Materail) by Chief Engineer, WRD (then Irrigation Department), Pune vide Memorandum letter No. मुअ/काअ-2/ मुदका/ 7167 /6022 dated 12/09/2006.
- c) The Appellant has submitted that it's both water lifting source should not be classified as 'Regulated Water Supply with Conveyance Losses'. Water lifted from private well and water drawn from Mula River is not at all regulated by the Respondent. Therefore, it's both water lifting source should be classified as 'Assured water supply'. The Respondent submitted that the Appellant's source categorisation is done as per the various Government Resolutions and this Authority's Orders issued from time to time.
- d) This Authority, vide Order letter No. MWRRRA 2011/BWT-Order/(59)/315 dated 30/05/2011 has also stated that 'Assured Water Supply' means water lifted from Major / Medium reservoir or Storage Tank without Canal. The Authority, in the said Order also stated that 'Regulated Water Supply with Transmission Losses' means regulated river portion below dam / canal lift / K.T. weir with back up reservoir / tail race from reservoir. The 'Partly Assured Water Supply' means Minor reservoir with canal / K.T. weir without back up reservoir/



*[Handwritten signature]*



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.

- e) Also, this Authority vide its Order No. 01/2018 dated 11/01/2018 has given explanation of terms viz. 'Regulated Water Supply with conveyance losses' means water used 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.
- f) As Appellant's both lifting sources are not from reservoirs of any dam but from a River or Nalla, below the dam i.e. Mulshi Dam and Urawade Minor Irrigation Tank. The water is released from these dams into the River or Nalla mainly for irrigation purpose. Therefore, in view of above, the Appellant's lifting sources fall under the category of 'Regulated Water Supply with conveyance losses'.

Thus, the issue is answered in affirmation.

**(iii) Whether the Appellant - Industry should be charged as Industry using water as "Raw Material"?**

- a) The Appellant was sanctioned water quota for 0.150 Mcum from private owned well within 35 meters from Urawade Nala for industrial use and 0.306 Mcum of water from Ambadwet KT weir on Mula River for beverage industrial water use (Raw Material). As per the latest agreement, these sanctioned quota of water are shown under 'For industry using potable water bottling' and no quota against other water uses is shown. There is no bifurcation of sanctioned quota in the agreement, as claimed by the Appellant in the present matter.
- b) Water Resources Department (then Irrigation Department) vide Government Resolution No. संकिर्ण २००२/(१४८/२००२)/सिब्य (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" means those industries manufacturing 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 industries (Type - 1) was fixed at five times to the rate of Industries excluding beverage industries (Type - 2).

- c) The above sub-categorisation of industries and the principle envisaged for levy of water charges are further continued in Water Resources Department's Government Resolution No. पापद २००६/(३९६ /०३)/ सिव्य (घो), dated 31/07/2006.
- d) This Authority had also used the same sub-categorisation of industries and the principle in its first BWT Order letter No. MWRRA 2011/ BWT-Order/(59)/315 dated 30/05/2011.
- e) 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. However, this Authority fixed the rate for industries under "Raw Materials" about twenty five times to the rate of industries under "Process". 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.
- f) This Authority, in its third BWT Order dated 29/03/2022, has followed the same sub-categorisation of industries and also prescribed the rates 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,



*[Handwritten signature]*



Spirit, Alcohol, Ethanol, Breweries and Distilleries or similar industries.

- g) As per the directions of the Authority regarding Respondent to take appropriate decision on the Appellant's request of bifurcation of its sanctioned water quota, Chief Engineer (WR), WRD, Pune vide his Memorandums dated 17/11/2022 has given bifurcation i.e. 66.581% as Raw Material, 29.135% as Process and 4.284% as Domestic. This bifurcation is based upon the Maharashtra Pollution Control Board's Amendment in Renewal of Consent to Operate dated 16/10/2018. According to this, the water consumed under 'Raw water uses for production' is 777 cubic meter per day (CMD) which is 66.581% against total water consumption of 1167 CMD. As per the Maharashtra Pollution Control Board's Renewal of Consent to Operate dated 18/05/2018, the basis of 777 CMD can be seen from Para 3, wherein it is stated that the consent is valid for manufacturing of 727 CMD of Carbonated Beverages & Carbonated Water and 50 CMD of Packaged Drinking water. Thus, it seems that there is not enough base for bifurcation of sanctioned quota.
- h) However, 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) The Appellant is engaged in the business of manufacturing and sale of sweetened carbonated water, carbonated water, fruit-



*[Handwritten signature]*



based drinks and packaged drinking water. Therefore, all its water lifted from private well and K. T. weir should be charged under Industries using water as "Raw Material".

Thus, the issue is answered in affirmation.

(iv) Whether the Appellant - Industry is entitled to a 25% rebate as per Para 5.1 of Annexure 3 of the Bulk Water Tariff Order of this Authority dated 11/01/2018?

a) The Appellant has submitted that its water usage ratio i.e. Total water used excluding Domestic water use divided by Beverages production is 1.41. This means that the water requirement for manufacturing of 1 Liter of Beverage is only 1.41 Liters of water which is below the industrial water usage benchmark of 2 Liters / Liter of Beverage.

b) The Respondent submitted that the Appellant has failed to submit the proof for saving in water consumption by recycling and after receipt of such information, the applicability of 75% concessional rate can be examined. Therefore, concessional rate cannot be applied to the Appellant at present.

c) Para 5.1 of Annexure 3 of the Tariff Order of this Authority dated 11/01/2018 reads as follows;

*If any industry reduces its requirement by recycling (reducing its net demand of water up to minimum 75% or less than that), it shall be charged at 75% of applicable rate, provided, officers of WRD not below the rank of Executive Engineer have confirmed the reduction made in water use by recycling*

d) As per the above provision, Executive Engineer, Pune Irrigation Division, Pune has to ascertain that the reduction in net water demand only by recycling and reusing.

Thus, the issue is answered as above.



## 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 Appellant water use is liable to be charged under 'Industrial Water Use' with category of water used as 'Raw Material'.
- (ii) The Appellant's both water lifting sources fall under the category of 'Regulated Water Releases with Conveyance Losses'.
- (iii) The applicability of 25% of rebate in tariff has to be decided by the Executive Engineer, Pune Irrigation Division, Pune in the matter after ascertaining that there is reduction in Appellant's net water demand due to recycling and reuse of wastewater.
- (iv) If the Appellant wants to have separate charging for its domestic water use, he should get that domestic water use quantity sanctioned, lay separate necessary infrastructure and then entered into an agreement with the Respondent. The Respondent should sanction Appellant's domestic water use as per the norms prescribed in the Bureau of Indian Standards (IS 1172 : 1993) after ascertaining that the water used for colony developed by the Appellant.

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

Delivered on May 03, 2023.

Sd/-

Sd/-

Sd/-

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

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

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

(Dr. Ramnath Sonawane)  
Secretary  
Maharashtra Water Resources  
Regulatory Authority,

9<sup>th</sup> Floor, Center-1, World Trade Center,  
Cuffe Parade, Mumbai - 400005.

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महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण  
Maharashtra Water Resources Regulatory Authority

9th & 11th Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai-400005.

