



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 पहातसव

No. MWRRRA/2022/Legal/Case No. 01(2022)/466

Date : 30/06/2023


Case No. 1 of 2022

In The Matter of

An Appeal filed by Shelke Beverages Pvt. Ltd. Kondhapuri, Taluka Shirur, District Pune under section 22 of MWRRRA Act, 2005 challenging the Primary Dispute Resolution Officer's dated 25/03/2022 regarding levying water charges to water drawn from private well.

Please find enclosed herewith a copy of MWRRRA Order No. 04/2023 dated 30/06/2023 in the above matter.




(Dr. Ramnath Sonawane)
Secretary, MWRRRA

Copy for information & necessary action to :-

- 1) Shelke Beverages Pvt. Ltd. Kondhapuri, Taluka Shirur, District Pune, through Adv. Shruti Tulpule, Add: 14,15,16, Gundecha Chambers, Ash lane, Fort , Mumbai-400023 (Appellant).
- 2) Primary Dispute Resolution Officer & Chief Engineer (WR), Water Resources Department, Sinchan Bhavan, Mangalwar Peth, Barne Road, Pune - 411011 (Respondent - 1).
- 3) Executive Engineer, Chaskaman Irrigation Division, New Administrative Building, 10, Bund Garden Road, Opposite Council Hall, Pune - 411001 (Respondent - 2).
- 4) Superintendent Engineer, Pune Irrigation Circle, Sinchan Bhawan, Barne Road, Mangalwar Peth, Pune - 411011 (Respondent - 3).
- 5) Shri. Akshay Deepak Gaikwad, Kondhapuri, Taluka- Shirur, Dist. Pune - 412209 (Respondent - 4).



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



प्रांत्याचा अमृत महोत्सव

ORDER NO. 04/2023

(Case No 01 of 2022)

In The Matter of

An Appeal filed by Shelke Beverages Pvt. Ltd. Kondhapuri, Taluka Shirur, District Pune under section 22 of MWRRA Act, 2005 challenging the Primary Dispute Resolution Officer's dated 25/03/2022 regarding levying water charges to water drawn from private well.

Shelke Beverages Pvt. Ltd,
Having its Office at No. 101,
Sr. No. 348A-1/3-2, Suyog Fusion Apartment,
Dhole Patil Road, Pune 411001,
Through its Director - Mr. Vishal Shelke.

.....Appellant

Versus

- 1) Primary Dispute Resolution Officer & Chief Engineer (WR),
Water Resources Department, Pune.
- 2) Executive Engineer,
Chaskaman Irrigation Division, Pune.

Superintendent Engineer,
Pune Irrigation Circle, Pune.



4) Shri. Akshay Deepak Gaikwad,
At post Kondhapuri, Taluka- Shirur,
Dist. Pune - 412209

.....Respondents

Mr. Shruti Tulpule for the Appellant

Adv. Supriya Dangare for the Respondent No. 1 - 3

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

Date : June 30, 2023

- 1.0 An Appeal is filed by Shelke Beverages Pvt. Ltd through Mr. Vilas Shelke, Director, Kondhapuri, Taluka Shirur, District Pune on 19/05/2022 under Section 22 of the Maharashtra Water Resource Regulatory Authority (MWRRA) Act, 2005 being aggrieved by the Primary Dispute Resolution Officer (PDRO) Order dated 25/03/2022.
- 2.0 The Appellant is a Company, registered under the Companies Act 1956, and is running a bottling factory in village Kondhapuri, Taluka Maval, District Pune and the shareholders are members of the Shelke family. The Appellant Company draws water from the wells in the land owned by the members of Shelke family and obtained licenses and permissions.
- 3.0 Shri. Akshay Deepak Gaikwad - Respondent No. 4 filed a complaint on 11/03/2019 alleging that the Appellant Company is illegally drawing water from Kondhapuri M. I. Tank for production of mineral water. Thereafter, Sub-Divisional Engineer vide Order dated 15/04/2019 directed the Appellant to pay Rs. 2,71,95,540/- for alleged unauthorised water use from Kondhapuri M. I. Tank. This Order was challenged by the Appellant before the Hon'ble High Court at Bombay in Writ Petition No. 5840 of 2019. The Hon'ble High Court, vide Order dated 03/03/2020 disposed of the Writ Petition and set aside the above said Order dated 15/04/2019. The Hon'ble High Court also directed Chief Engineer to hear the Appellant and pass appropriate orders.



- 4.0 During the hearing before Chief Engineer and PDRO, the Appellant was first time informed of Water Resources Department's (WRD) [then Irrigation Department] Government Circular No. सकिर्ण २००२/(४६०/२००२) /सिब्य (धो) dated 09/05/2003 regarding levying on non-irrigation water usage from wells in area of canal. The Appellant also stated that apart from said Government Circular dated 09/05/2003, there is no legislative enactment regarding the rates applicable for industrial water use drawn from a private well and that the Bulk Water Tariff (BWT) not applicable to water drawn from a private well.
- 5.0 Chief Engineer and PDRO vide Order dated 25/03/2022 directed that the Appellant Company is near Kondhapuri M. I. Tank which also receives water from Chaskaman Project, thus Appellant Company is in the command of Chaskaman Project and provisions of Section 55 and 56 of Maharashtra Irrigation Act 1976 applicable as per Government Circular dated 09/05/2003. PDRO has also directed the Appellant to pay Rs. 1,41,56,191 water charges for the period of Year 2011-12 to 2018-19.
- 6.0 Being aggrieved by the Order of PDRO, the Appellant has filed the present appeal under Section 22 of MWRRA Act, 2005. The Appellant submitted that as per definition of 'Bulk Water' given in the MWRRA (Fixing criteria for and issuance of tariff orders for bulk water) Regulations, 2013, water drawn from privately owned bore wells is not included in 'Bulk Water'. Therefore, the BWT as per MWRRA's Order dated 30/05/2011 and 11/01/2018 are not applicable to bore well water used for industrial use. Further, Section 55 and 56 of Maharashtra Irrigation Act, 1976 are not applicable in the present matter as they are applicable to 'any cultivated land' and the Appellant Company is not engaged in agriculture / irrigation. Although, the privately owned wells are situated in command area of Chaskaman Project, the wells do not benefit from the said project.
- 7.0 The Appellant also submitted that Maharashtra Groundwater (Regulation for drinking water purposes) Act, 2013 and Maharashtra Groundwater (Development and Management) Act, 2009 does not impose any water charges on drawing water from privately owned wells. As per Government Circular dated 09/05/2003, two wells are within 35 meters from a nalla and one bore well is not situated within 35 meters from any nalla. Further, these bore wells constructed by the Company are 'Storage areas' and equivalent to 'dams' and therefore 50% of Rs. 50/- per 10,000 liter rate is applicable and



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accordingly, the Appellant is ready to pay Rs. 5,93,694/-. There is no provision in the Government Circular dated 09/05/2003 to levy penal charges and interest. Water used for toilets, kitchen and drinking should be excluded from the calculation for levy of water charges.

8.0 The Appellant, through an Appeal has prayed for the following reliefs:

- a) *The impugned Order dated 25.03.2022 (being Annexure "O" to this Appeal) passed by the Primary Dispute Resolution Officer & Chief Engineer, Irrigation Department, Pune, thereby holding that the Appellant is liable to pay Rs. 1,41,56,191/- being the aggregate of Rs. 97,62,891/- of bulk water tariff for industrial use, Rs. 24,40,722/- of penalty and Rs. 19,52,578/- of water cess for utilizing raw water from privately owned wells from the year 2011-12 to 2018-19, for the Appellant Company's bottling plant, be quashed and set aside;*
- b) *The Appellant Company be charged at the rate of 50% of Rs. 50/- per 10,000 liters as per Clause 4 of Annexure 1 of G.R. dated 09.05.2003, and the Executive engineer Chaskaman Irrigation Division be directed to raise challans for the period from 2011 onwards at this rate;*
- c) *The Executive Engineer, Chaskaman Irrigation Division be directed to exclude the water usage of 1090000 Liter per year for toilets and drinking water in the factory, from the total water usage;*
- d) *Such other just and equitable orders be passed.*

9.0 After Appellant filed the Appeal on 19/05/2022, the Authority has scrutinised the Petition and the Authority, vide letter dated 11/07/2022, has directed Respondents to file a para-wise Affidavit in Reply within two weeks. Accordingly, Respondent No. 2 - Executive Engineer, Chaskaman Irrigation Division, Pune has submitted parawise Affidavit in Reply dated 25/07/2022. He has raised preliminary objection in respect of maintainability of present appeal as per Regulation 11 of MWRRA Regulation, 2013, as the Appellant is not the consumer of Maharashtra Krishna Valley Development Corporation and till today there is no agreement between the Appellant and Respondent No. 2.

10.0 The Respondent No. 2 further submitted that as per Government Circular dated 09/05/2003 and Section 55 and 56 of Maharashtra Irrigation Act, 1976, water used from wells and bore wells in the command area for non-irrigation purpose is chargeable. Even though informed by the Respondent No. 2, the



Appellant has not submitted the proposal of water permission. The Appellant is charged as per the MWRRRA's Order of January 2018. Accordingly, the Appellant should pay water charges of Rs. 1,41,56,191/-.

11.0 The Authority has conducted first hearing in the matter on 14/12/2022. During the hearing, the Appellant briefed the matter and stated that the Appeal is to be allowed with cost. The Authority pointed out that there are no documents annexed in the Appeal about the lift permission. It is not clear whether land purchased is for agriculture or non-agriculture purpose. The water charges given in the said Circular are revised by the WRD's Government Resolution (GR) dated 31/07/2006. The Authority directed the Respondent No. 1 - 3 and the Appellant to file an Affidavit on some issues / points.

12.0 As per the directions given during the hearing, Respondent No. 2 - Executive Engineer, Chaskaman Irrigation Division, Pune has filed a para-wise reply dated 14/02/2023. The Respondent submitted that as per Superintendent Engineer, Pune Irrigation Circle, Pune 's letter dated 14/03/2019, a Joint Committee was constituted and submitted its Report stating a bill of Rs. 2,71,95,540/- was given to the Appellant for unauthorised water usage. Maharashtra Pollution Control Board (MPCB) and Maharashtra State Electricity Distribution Company were informed about the Appellant Company's unauthorised water use and taking appropriate action. As per State Water Policy, the Appellant Company need to recycle and reuse and therefore 20% concession is considered by PDRO. As per GR dated 23/12/2002, 25% penalty is levied on water bill. The bills raised for water consumption are based on sale details provided by the Appellant Company.

13.0 The Authority conducted the second hearing in the matter on 15/02/2023. During the hearing, the Appellant filed an adjournment application of the present hearing as the Appellant had filed Writ Petition (St) No. 4521/2023 in the High Court at Bombay challenging this Authority's order dated 29/12/2022. The Appellant further submitted that Hon'ble High Court, while disposing of the Writ Petition, has permitted the Appellant to file Affidavit in 3 weeks before this Hon'ble Authority. The Authority directed the Appellant to file an Affidavit in three weeks and PDRO & Chief Engineer (WR) - Respondent No. 1 to file an affidavit as per the directions issued by the Authority in the previous hearing.



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14.0 As per the directions given during the hearing, the Appellant has filed an Affidavit dated 06/03/2023. The Appellant submitted that as per the conditions stipulated in MPCB's consent to operate dated 14/02/2018, the Appellant has applied to Central Ground Water Authority's (CGWA) No Objection Certificate (NOC) for groundwater extraction on 24/05/2019. CGWA has granted NOC on 04/01/2023 and is valid till 03/01/2026. The Sale Deeds of land purchase by Shelke Family do not specify reason for land purchase. Regarding GR dated 31/07/2006, it is about water charges for water supplied to irrigation projects / tanks / bulk water source. As the Appellant is drawing water from privately owned well, the said GR does not apply in the present matter.

15.0 The Appellant further submitted that although, the said MWRRA's Regulations of 2013 repealed from 21/05/2019, the said Regulations were in force when the Appellant was carrying its business. Tariff orders promulgated under these Regulations have been continued till present. As per the definition of 'Bulk Water' in the said Regulations, water in the privately owned Borewells does not come under it.

16.0 The Authority conducted third hearing in the matter on 09/03/2023. During the hearing, the Authority observed that the Appellant's Affidavit is incomplete and incorrect. The said NOC is not in the name of the Appellant. There is a mathematical error in calculating the Applicable Rate which should be 7.25 instead of 2.50. The Authority directed the Appellant to file an Affidavit on few points. The Authority also directed PDRO & Chief Engineer (WR) - Respondent No. 1 to file an affidavit as per the directions issued by the Authority and on the Affidavit of the Appellant.

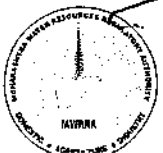
17.0 As per the directions given during the hearing, the Appellant filed an Affidavit dated 29/03/2023. The Appellant submitted that due to clerical error the NOC annexed in Affidavit dated 09/03/2023 was incorrect. The Appellant applied for NOC to CGWA on 15/03/2022 for extraction of groundwater from 6 Dugwells / Borewells for industrial purpose for total water requirement of 270 m³/day including recycled water usage of 70 m³/day. Out of the Appellant's total water requirement, 222 m³/day for Industrial use, 8 m³/day for Domestic use and 40 m³/day for Environment maintenance. The CGWA gave NOC to the Appellant Company to extract 222 m³/day water which is valid from 23/06/2022 to 22/06/2025. Due to inadvertence, Annexure 'Q' of the Appeal has an arithmetic error which is corrected. The Appellant does not manufacture carbonated soft drinks.



18.0 As per the directions given during the hearing, the Respondent No. 2 has filed an Affidavit dated 31/03/2023. He reiterated the issue of maintainability of the present appeal under MWRRA Regulation, 2013 as the Appellant is not a 'Consumer' of Respondent No. 1 - 3. The PDRO's Order dated 25/03/2022 passed by following due process of law and is not perverse, arbitrary or contrary to law. A joint Committee, constituted in this matter, visited the site in question on 04/04/2019 and submitted that all the wells / borewells fall under the command area of Chaskaman Project and the Appellant has also admitted the same in its Appeal Memo at Para (2) on Page 10. The Appellant has not provided any requisite information asked by the present Respondent. The Appellant is continued the illegal usage of water from the wells in command area without paying any water charges.

19.0 The Respondent No. 2 further submitted that the Appellant is in the business of packaged drinking water since the Year 2011 and in spite of ample opportunity given, the Appellant failed to show any permission for lifting / extracting water from the present Respondent or CGWB. Thus, the Appellant is not only defrauding the Government but also illegally exploiting natural resources. The Appellant is bound by provisions in Government Circular dated 09/05/2003 and Section 56 of Maharashtra Irrigation Act, 1976 which makes it clear that usage of water from any well under the command area of project shall attract water tax. The Appellant has not paid any water charges from 2011 till date, lifting water illegally without requisite permission and has violated MPCB's consent terms. Therefore, the Appellant does not deserve any relief in its favour.

20.0 As per the directions given during the hearing, the Appellant has filed an Affidavit in Rejoinder dated 15/04/2023 on Respondent No. 2's Affidavit dated 31/03/2023. The Appellant submitted that the Respondent's said Affidavit is completely silent about the calculation made by Chief Engineer regarding water charges, penal charges local cess etc. and power to levy penal charges. The present Appeal is maintainable under Section 22(3) of the MWRRA Act, 2005. Moreover, Rule 11(2) of the MWRRA (Conduct of Business) Regulations, 2013 is restricted to eligibility to "Petition" the Authority. Regarding drawing water from well located in Kondhapuri is concerned, it is submitted that underground pipeline from the well adjoining canal is directly supplied to Gat No. 80 for the purpose of sugarcane cultivation and has paid water charges for agriculture purpose. The Appellant draws water from wells situated on Gat No. 86 and 116 in village



Kondhapuri and Gat No. 361 in village Khandale which is not countered by Respondent No. 2. Therefore, contention of drawing water from well located in Kondhapuri Lake cannot be raised for the first time.

21.0 The Appellant further submitted that PDRO's order is devoid of reasons and has been passed without considering Bulk Water Tariff (BWT) are not applicable to water drawn from private well. The Appellant has right to file an Appeal and there is no multiplicity of proceedings. The Joint Committee's inspection notice was not given to the Appellant and its Report is incorrect and completely contradictory to factual situation on ground. The water from the well near Kondhapuri Lake is utilised for agriculture purpose. The Appellant has produced all data regarding water manufactured and relevant documents on record. The Appellant has obtained permission from CGWB belatedly and is ready to pay water charges as per Government Circular date 09/05/2003. Therefore, the Appeal be allowed and set aside impugned order.

22.0 The Authority conducted fourth hearing in the matter on 19/04/2023. During the hearing, the Appellant submitted that it has received permission to abstract groundwater from the Central Groundwater Authority which is valid from 23/06/2022 to 22/06/2025 and there was no permission to extract groundwater without any from 2011 to 23/06/2022. Also, there is no dispute about quantity of groundwater extracted which is based upon the quantity of production. The Appellant is ready to pay Rs. 17.21 Lakh as water charges based upon the water rates prescribed in Government Circular dated 09/05/2003. The Authority directed the Appellant to file an Affidavit about the details of water charges paid for water used for irrigation purpose and Respondent No.2 to file an additional affidavit explaining table given in the Para 3 and Para 4 of the PDRO's order dated 25/03/2022.

23.0 As per the directions given during the hearing, the Respondent No. 2 has filed an Affidavit dated 26/04/2023. He submitted that while assessing water charges payable by the Appellant, Respondent No. 1 has considered norms as per MWRRRA Order No. 09/2017 dated 22/09/2017 and established norm of 20% concession as the Appellant reuses the water. Respondent No. 1 has considered all the parameters, water charges prescribed under Rules & tariff orders of respective year and derived water charges payable by the Appellant. If this Authority thinks appropriate and direct the same to be reassessed, the Respondent will have adhered to such direction issued by this Authority.



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- 24.0 As per the directions given during the hearing, the Appellant has filed an Affidavit dated 25/04/2023 on Respondent No. 2's Affidavit dated 31/03/2023. The Appellant submitted that it has been paying water charges for agriculture irrigation from Year 2011 onwards. The Appellant Company draws water for its bottling plant from 1 borewell & 5 wells and is not lifting water from Kondhapuri Lake for manufacturing bottled water.
- 25.0 The Authority conducted the fifth and final hearing in the matter on 27/04/2023. During the hearing, the Authority heard the both parties and closed the proceedings for the Order.
- 26.0 Shri. Akshay Deepak Gaikwad - Respondent No. 4 neither appeared in person or through any representative nor made any submissions during the course of hearings in this matter, even though the copy of an Appeal and Record of Proceedings were served upon him from time to time.

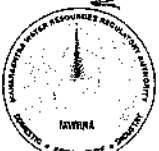
FRAMING OF ISSUES

- 27.0 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 Company is liable to pay water charges as per the BWT fixed by this Authority?
 - (iii) Whether the Impugned Order of the PDRO dated 25/03/2022 is required to be set aside?
 - (iv) Whether any other directions are required to be given to the Appellants and Respondents?



FINDINGS OF THE AUTHORITY

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



(a) **Provisions in Maharashtra Irrigation Act, 1976**

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 ;

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 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.

(b) **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



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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;

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

"Bulk Water" means any water supplied on volumetric basis to the specific category or categories of use from surface water resources produced by a project, river system or storage facility created or naturally available in the State, either in Public or Private Sector as the case may be.

"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 Tariff System" means charges for supply of Bulk Water to various category of users and it shall also includes incentives and disincentives set to facilitate certain strategic objectives provided in the Act.

"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.



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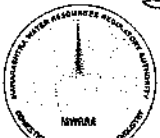


29.0 In the light of the above provisions contained in the relevant Acts, the observations of the Authority are as follows;

- (a) The Appellant is a Bulk Water User Entity in the present matter and the Respondents No. 1 - 3, officers of the Water Resources Department, is the Bulk Water Supply Entity.
- (b) The Appellant - industry is a licensed Company (Registered on 27/11/2008) and is engaged in the business of a bottling factory. As per the Consent to Operate, issued by MPCB, the Appellant was given consent to manufacture 40,000 liters per day packaged drinking water. The Appellant has commenced its production from July 2011.
- (c) As per the Para 12 of the said 'Consent to Operate', this consent is issued subject to obtaining CGWA permission within Six Months period if not, this consent shall stand as cancelled. However, the Appellant has filed an Application to CGWA for NOC to abstract groundwater on 30/03/2022 which was granted by CGWA and is valid from 23/06/2022 to 22/06/2025. Thus, the Appellant was not having any valid 'Consent to Operate' and CGWA permission to extract groundwater from July 2011 to June 2022.
- (d) The Appellant Company applied for NOC from CGWA on 15/03/2022 for extracting groundwater with total water requirement of 270 m³/day including recycled water usage of 70 m³/day. Out of total water requirement, 222 m³/day for Industrial use, 8 m³/day for Domestic use and 40 m³/day for Environment maintenance. However, CGWA gave NOC for 200 m³/day for extracting groundwater with Mandatory and General Conditions specially installation of tamper proof digital water flow meter with telemetry on all abstraction structures.
- (e) The Appellant Company's plant is constructed on agricultural land however there is nothing on record to show that the permission from appropriate authority for non-agricultural use is obtained.
- (f) The Appellant has relied upon MWRRRA (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Regulations, 2013. However the said Regulations were repealed by Notification dated 21/05/2019. At present, MWRRRA (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Guidelines, 2019 are in force.



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- (g) The PDRO's Order dated 25/03/2022 is erroneous on several counts. The PDRO, in the absence of record of actual quantity lifted, has considered this Authority's criteria of 1.40 liter of water required for production of 1.00 liter of finished bottled water for working out the quantity of water used. However, the PDRO erred in giving flat 20% concession in that criteria i.e. 1.12 assuming that the Appellant Company recycles and reuses its water. However, as per this Authority's BWT Orders issued from time to time, 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, an Executive Engineer should confirm such reduction in water use. As there is no such confirmation / documents on record, the Appellant Company was not entitled for any concession.

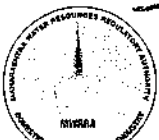
The PDRO also erred in levy flat 25% penal charge for negligence of field officers and ignorance of the Appellant, as there is no such provision in this Authority's BWT Order of 2011. However, as per Para 6.4 of Annexure No. 3 of this Authority's BWT Orders dated 11/01/2018, if water is used without agreement and without meter, 2.50 times of applicable rate to be applied to the Appellant from 01/02/2018 onwards. Also, as per Para 8 of Annexure No. 3 of this Authority's BWT Orders dated 29/03/2022, if water is used without agreement, 2.00 times of applicable rate to be applied to the Appellant from 01/07/2022 onwards.

- (h) WRD (then Irrigation Department) vide GR No. WTR 1088/745/ सिंव्य (धो), dated 10/09/1991 revised water rates for drinking and industrial water supply and fixed yearly water rates from 01/07/1991 onwards and vide GR No. संकिर्ण १०९६/४१८/ सिंव्य (धो), dated 28/08/1998 revised water rates for drinking and industrial water supply and fixed yearly water rates from 01/07/1998 onwards.

- (i) WRD (then Irrigation Department) vide GR No. पापद १००१/(५/२००१) /सिंव्य (धो), dated 24/10/2001 and Corrigendum - GR No. संकिर्ण २००२ (१४८/२००२)/सिंव्य (धो), dated 28/11/2002 again revised water rates for drinking and industrial water supply and fixed yearly water rates from 01/09/2001 onwards. However, WRD, vide these GRs, sub-categorised industrial water rates into two types of industries i.e. Type - 1) पाण्याचा



Amad



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).

- (j) WRD (then Irrigation Department) vide Government Circular No. संकिर्ण २००२/(४६०/२००२)/सिव्य (घो), dated 09/05/2003 directed to levy half water rates for industrial water use from wells within the command of the irrigation project and 35 meters of nearest border of canal as per Section 56 of the Maharashtra Irrigation Act, 1976. The industrial rates are prescribed in the three Appendixes of the said GR. However, these Appendixes are the Annexures of the WRD's GR No. संकिर्ण २००२ (१४८/२००२)/सिव्य (घो), dated 28/11/2002.
- (k) WRD (the then Irrigation Department) vide GR No. पापद २००६/(३९६/०३)/सिव्य (घो), dated 31/07/2006 revised the water rates for drinking and industrial water supply and fixed yearly water rates from 01/09/2006 onwards.
- (l) Government of Maharashtra in June 2005 enacted the MWRRRA Act, 2005. As per Section 11(d) and Section 11(u) of the said Act, this Authority, vide Order letter No. MWRRRA 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.). These water rates were applicable from Rabi 2010-11 onwards. The rates per 10 m³ i.e. per 10,000 liters were fixed as stated below;



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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 area where there is no bandhara or K.T. weir	16	80
4.	<u>Reservoir Constructed by the Water User Entity / User Entity 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.



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- (m) WRD, vide GR No. संकिर्ण २०१०/४०७/१०/सि.व्य (धो), dated 29/06/2011, decided that the BWT for domestic and industrial use shall be as per this Authority 's Order dated 30/05/2011.
- (n) The BWT fixed by this Authority vide the Order dated 30/05/2011, was extended from 2013 to January 2018. This Authority 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. WRD, vide GR No. संकिर्ण-२०१४/(४३/१४)/सि.व्य.(धो), dated 27/02/2018, decided that this Authority's said BWT Order No. 01/2018 should be implemented accordingly.
- (o) This Authority's said BWT Order No. 01/2018, was extended from June 2020 to March 2022. This Authority reviewed and revised water charges under Section 11(u) of the MWRRA Act, 2005 and issued BWT Order dated 29/03/2022. The water charges were applicable from July 2022 onwards.
- (p) This Authority, as mandated under Section 11(d) of the MWRRA Act 2005, 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.

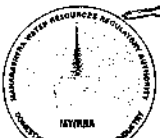
30.0 This Authority, after giving due consideration to the pleadings, submissions and evidence on record has adjudicated the above issues. The findings of this Authority on the issues framed above are as under:

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

- a) The Appellant has approached the PDRO as per the Hon'ble High Court at Bombay Order in Writ Petition No. 5840/2019 dated 03/03/2020.
- b) The Appellant has approached this Authority by way of an Appeal dated 13/05/2022 under Section 22 of the MWRRA Act, 2005. The Appellant has mainly prayed to quash and set aside impugned Order of PDRO dated 25/03/2022.



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- c) As per Section 22 (3) of the MWRRRA Act 2005, any person aggrieved by an order of the PDRO may, within sixty days from the receipt of such order, prefer an appeal to the Authority.
- d) As the Appellant approached this Authority against the PDRO's Order, this Authority has jurisdiction to adjudicate the present matter under Section 22(3) of the MWRRRA Act, 2005.

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

(ii) Whether the Appellant Company is liable to pay water charges as per the BWT fixed by this Authority?

- a) The Appellant submitted that it uses water for its bottling plant from 1 Borewell and 5 Dugwells located in Village Kondhapuri and WRD's Government Circular No. संकिर्ण २००२/(४६०/२००२)/ सिंव्य (धो), dated 09/05/2003 is applicable in the present matter.
- b) The Section 56 of the Maharashtra Irrigation Act, 1976 reads as follows;

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 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.

- c) Accordingly, WRD vide above Government Circular dated 09/05/2003 has prescribed yearly water rates for industrial and domestic use which are based on WRD's GR No. संकिर्ण २००२



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(१४८/२००२)/सिब्य (घो), dated 28/11/2002. This Circular is applicable from 01/04/2003 onwards.

- d) The yearly rates prescribed in the above Government Circular were revised by WRD vide GR No. पाषद २००६/(३९६/०३) /सिब्य (घो), dated 31/07/2006, this Authority's BWT Order vide letter No. MWRRA 2011/BWT-Order/(59)/315 dated 30/05/2011, BWT Order No. 01/2018 dated 11/01/2018 and BWT Order dated 29/03/2022.
- e) As the Appellant Company started its production from July 2011, this Authority's BWT Orders issued from time to time are applicable in the present matter.

Thus, the issue is answered in affirmation.

(iii) Whether the Impugned Order of the PDRO dated 25/03/2022 is required to be set aside?

- a) The Appellant submitted that PDRO's Order is based on this Authority's BWT Order and is not applicable to water used by privately owned Bore well/Dug well. However, as stated above, this Authority's Order does applies in this matter.
- b) As there is no record of actual quantity of water lifted/extracted by the Appellant from wells, PDRO has considered the yearly finished production of the Appellant and the criteria fixed by this Authority vide Order No. 09/2017 dated 22/07/2017 i.e. 1.40 liter of water required for production of 1.00 liter of finished bottled water for working out the quantity of water used.

However, the PDRO erred in giving flat 20% concession in the above criteria of 1.40 i.e. 1.12 assuming that the Appellant Company recycles and reuses its water. However, as per this Authority's BWT Orders, issued from time to time, stated that 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, Executive Engineer should confirm such reduction in water use. As there is no such confirmation /



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documents on record, the Appellant Company is not entitled for any concession.

The PDRO also erred in imposing 25% penal charge in view of negligence of field officers and ignorance of the Appellant, as there is no such provision in this Authority's BWT Order of 2011. However, as per Para 6.4 of Annexure No. 3 of this Authority's BWT Orders dated 11/01/2018, if water is used without agreement and without meter, 2.50 times of applicable rate to be applied to the Appellant from 01/02/2018 onwards. Also, as per Para 8 of Annexure No. 3 of this Authority's BWT Orders dated 29/03/2022, if water is used without agreement, 2.00 times of applicable rate to be applied to the Appellant from 01/07/2022 onwards

- c) The PDRO rightly adjudicated that the Appellant Company's water source i.e. wells / bore-wells are under the command of Chaskaman Project, as per WRD's above Government Circular dated 09/05/2003 in accordance with provisions of Section 56 of Maharashtra Irrigation Act, 1976 and levied the appropriate rate as per this Authority's BWT Orders of 2011 and 2018. Hence, this Authority is of the considered view that the Impugned Order of the PDRO is not required to be set aside *in toto*.

Thus, the issue is answered in the negative.

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

- a) The Respondent No. 2 pointed out that the Appellant has not entered into an Agreement with Water Resources Department and is not the 'Consumer' of the Respondent. On the other hand, the Appellant submitted that the borewells constructed by the Appellant Company are 'Storage areas' and equivalent to 'Dam'. Therefore, as per said Government Circular dated 09/05/2003, rate at Sr. A (4) in Appendix 1 is applicable.

- b) The Authority observed that as per Para 7 of the said Government Circular dated 09/05/2003, there was no need to approve water reservation / quota for water used from well for industrial purpose. However, permission for such well should be obtained and both



parties should enter into an agreement. In the absence of such permission and agreement, the water use of the Appellant Company is to be considered as unauthorised use.

- c) The Authority observed that the rate prescribed as per Sr. A (4) in Appendix 1 will be applicable had the Appellant constructed the dam at its own cost or shared the cost in proportion to its water use. However, there is nothing on record to show that the Appellant shared the cost of Chaskaman Project.
- d) Therefore, the Appellant contention about considering its private well as 'Dam' is misconceived. This Authority is of the considered view that the Appellant should obtain permission for lifting / extracting groundwater for industrial purpose and enter into an agreement with Respondent No. 2.
- e) The Appellant should be charged as well in the command of the Project as envisaged in Section 56 of Maharashtra Irrigation Act, 1976.

The issue under consideration is answered accordingly.

ORDER

31.0 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 should obtain permission for lifting / extracting groundwater for industrial purpose from concerned officers of WRD and enter into an agreement with Respondent No. 2.
- (ii) The Appellant should abide by the Mandatory and General conditions as specified in the NOC of CGWA specially installation of tamper proof digital water flow meter with telemetry on all abstraction structures.
- (iii) As per the provisions of Maharashtra Irrigation Act 1976, WRD's said GR dated 09/05/2003 and MWRRA Act 2005, the Appellant is liable to pay water charges as fixed by this Authority from time to time.



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- (iv) The Appellant's water use, i.e. wells in command area of Chaskaman (Major) Project, falls under 'Industrial Water Use' with category of water used as 'Raw Material' and its water lifting sources fall under the category of 'Regulated Water Releases with Conveyance Losses'.
- (v) Respondent No. 3 should issue revised bills and levy water charges as per this Authority's Order from July 2011 onwards as per the prevailing rates applicable from time to time.
- (vi) 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.
- (vii) As the CGWA has given NOC to the Appellant in June 2022, the Respondent No. 3 should inform MPCB that the Appellant Company is operating without Consent to Operate from July 2011 to June 2022 and to take necessary action as per prevailing law.

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

Delivered on June 30, 2023.

Sd/-

Sd/-

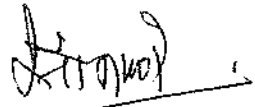
Sd/-

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

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

(Shri. Sanjay D. Kulkarni)
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