IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2733 OF 2025

1] United Spirits Limited,
a Company incorporated under the
Companies Act, 1956, having its
registered address at UB Tower, Level 10,
24, Vittal Mallya Road, Bengaluru 560001
and its regional office at Balapur,
Taluka – Dharmabad, District – Nanded

2] Mr. Ashok Tahade
Adult, Indian Inhabitant and citizen,
Senior Manager, Corporate Relations of
Petitioner No. 1, having his office at Balapur,
Taluka Dharmabad, District – Nanded .. Petitioners

Versus

1] State of Maharashtra
Water Resources Department,
Madam Cama Marg, Hutatma Rajguru
Chowk, Mantralaya, Mumbai 400 032

2] Maharashtra Water Resources
Regulatory Authority,
9th Floor, Center One, World Trade Center,
Cuffe Parade, Mumbai 400 005

3] Chief Engineer and Chief Administrator
Cum Primary Dispute Resolution Officer
(Godavari Valley) Beneficiary Area
Development, Water Resources Department,
Aurangabad

4] Sub-Divisional Engineer,
Water Resources Department,
Babhali Irrigation Sub-Division,
Umari, District – Nanded

5] Executive Engineer,
Water Resources (Irrigation) Department
North, District – Nanded .. Respondents

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Mr. Zal Andhyarujina, Sr. Advocate (Through V.C.) a/w Mr. Shrey Sancheti, Mr. Vijay Purohit, Mr. Faizan M. Mithaiwala, Mr. Samit Jain, Mr. Vinit Kamdar, Mr. Sagar S. Vidwauns and Mr. Amol A. Waghmare i/by P&A Law Offices, Advocate for the petitioner

Dr. Uday Warunjikar (Through V.C.), Advocate a/w Mr. V.B. Tapkir i/by Mr. S.V. Hange, AGP for the respondent – State

Mr. Pratap P. Mandlik, Advocate for respondent no. 2

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CORAM : MANISH PITALE &
Y.G. KHOBRAGADE, JJ.

RESERVED ON : 06 AUGUST 2025
PRONOUNCED ON : 26 SEPTEMBER 2025

JUDGMENT (PER – MANISH PITALE, J.) :

Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, the petition is heard finally, at the stage of admission.

2. The petitioner – company has a manufacturing unit / factory located at Balapur, Taluka – Dharmabad, District – Nanded and it is engaged in the business of manufacturing Indian made foreign liquor (IMFL). Initially, this writ petition was filed by a company called Pioneer Distilleries Ltd. but, subsequently, the present petitioner i.e. M/s. United Spirits Limited, was substituted in place of the original petitioner, by way of amendment.

3. The petitioner is aggrieved by demand notices issued against it, in respect of charges for lifting of water from Godavari river,

for the purposes of manufacturing IMFL in the aforesaid manufacturing unit. The petitioner claims that the said demand notices are arbitrary and illegal, as the basis of arriving at such astronomical charges by respondents, is unsustainable, in the light of the opinion expressed by this Court in some earlier proceedings concerning similarly situated entities.

4. It is further the case of the petitioner that bulk water tariff orders of the year 2018 and 2022, issued by respondent no. 2 i.e. Maharashtra Water Resources Regulatory Authority under the provisions of the Maharashtra Water Resources Regulatory Authority Act, 2005 (**MWRRA Act**), are arbitrary and also *ultra vires* the aforesaid MWRRA Act. On this basis, it is submitted that the notices deserve to be quashed and set aside and even the aforesaid bulk water tariff orders also deserve to be declared as unconstitutional, discriminatory and *ultra vires* the MWRRA Act. The petitioner has also challenged the orders passed by respondent no. 3 as the original authority and respondent no. 2 as the appellate authority, in respect of the challenge raised to the demand notices on behalf of the petitioner.

5. In order to explain the backdrop, in which the instant writ petition was filed raising various questions with regard to the power and authority of the respondents to issue such demand notices,

particularly in the context of the MWRRA Act, it would be necessary to refer to the chronology of events.

CHRONOLOGY OF EVENTS :

6. On 19.05.1995, the predecessor of the petitioner (for the sake of convenience, the petitioner as well as the predecessor shall be referred to hereinafter as the **petitioner**) was granted permission to utilize 30 Lakh liters of water per day for agricultural purposes. The Collector, Nanded granted the aforesaid permission under section 70 of the Maharashtra Land Revenue Code, 1966 (**MLR Code**). In 1999, the petitioner commenced the operation of its aforesaid distillery / manufacturing unit in Dharmabad, District – Nanded and for that purpose, it lifted water from river – Godavari. The petitioner utilized the water for manufacturing ethanol as well as IMFL. On 01.02.2003, the Collector, Nanded granted permission to the petitioner to utilize 8 Lakh liters water per day for industrial purpose. The said permission was granted under section 70 of the MLR Code. The petitioner was charged rate of Rs.1/- per cubic meter (CuM) of water.

7. It is the specific case of the petitioner that even though the respondents claimed that the said rate of water tariff was revised periodically, it was never informed about the same and that the Collector continued issuing bills towards water charges at the rate of

Rs.1/- per CuM. The petitioner paid the aforesaid amounts. In the year 2005, MWRRA Act was brought into force and respondent no. 2 – appellate authority came into existence. In the year 2013, Babhali dam was constructed about 4 km upstream from the place or the source of water lifting of the petitioner on river Godavari. During the period of 2014 to 2018, the Collector, Nanded raised demand for water charges @ Rs.10/- per CuM. The petitioner claimed that there was no justification for such increase, yet, it paid the amount at higher rate under protest.

8. By a notification issued on 31.07.2018 under the Maharashtra Irrigation Act, 1976, the source on the river – Godavari from where the petitioner was lifting water. For the first time, came under the jurisdiction of the respondent no. 2 – appellate authority. It is relevant to note here that prior thereto, on 11.01.2018, respondent no. 2 – appellate authority issued the impugned bulk water tariff order, reviewing and revising bulk water rates for domestic, industrial and commercial use in the State of Maharashtra. The said water tariff order of 2018 at Annexure – 3, provided the bulk water rates for industrial use, classifying industries into two categories i.e. process industry and raw material industry. Different tariff rates were specified for the two categories.

9. On 14.12.2018, respondent no. 4 i.e. Sub Divisional Engineer of Water Resources Department, Babhali Irrigation Sub Division, Nanded, informed the petitioner that the water lifting point from where the petitioner was lifting water was wholly within the jurisdiction of respondent nos. 4 and 5 – authority and that the said water tariff order – 2018 applied to the petitioner.

10. On 31.12.2018, respondent no. 5 i.e. the Executive Engineer, Water Resources (Irrigation Department), Nanded issued demand notice to the petitioner for an amount of about Rs.14.13 Crores for the month of November – 2018. By a subsequent notice dated 10.01.2019, a further demand notice was issued, increasing the demand to about Rs.20.75 Crores.

11. On 19.01.2019, the petitioner sent response to the said demand notices, stating that the revised rate of Rs.240/- per CuM made applicable to the petitioner, was arbitrary. The petitioner stated that it could not be classified as a raw material industry under the water tariff order – 2018. It is further stated that Annexure - 3 to the said water tariff order – 2018, indicated difference between a partly assured water supply and a regulated water supply source, emphasizing that the lifting point of the petitioner, was a partly assured lifting point and,

therefore, even as per the said Annexure, of the water tariff order – 2018, much lower rates ought to be made applicable to the petitioner.

12. On 11.02.2019, respondent nos. 4 and 5 issued demand notice to the petitioner to pay amount of about Rs.62.45 Crores towards water tariffs / charges for the months of November 2018 to January 2019, along with penalty of 2.5 times the basic rate. On 12.02.2019, the petitioner filed writ petition no. 2468 of 2019 before this Bench of the Bombay High Court, to challenge the said demand notice. On 26.02.2019, this Court restrained respondents no. 4 and 5 from taking any coercive steps against the petitioner, subject to the petitioner depositing an amount of Rs.50 Lakhs. The said amount was indeed deposited by the petitioner in this Court on 08.03.2019. On 20.06.2019, a Division Bench of this Court disposed of the aforesaid writ petition of the petitioner as withdrawn with liberty to the petitioner to avail the alternative remedy of approaching respondent no. 3 i.e. the Primary Dispute Resolution Officer (**PDRO**), to raise its grievance. The amount of Rs.50,00,000/- deposited in this Court, was transmitted to respondent no. 4 i.e. the Sub Divisional Engineer of the Water Resource Department. On 24.06.2019, the petitioner filed its application before respondent no. 3 – PDRO under section 22(1) of the MWRRA Act, to challenge the said impugned notices.

13. During the pendency of hearing and completion of pleadings before respondent no. 3 – PDRO, respondents nos. 4 and 5 requested for a direction to the petitioner, to pay lumpsum payment in respect of water lifting. On 01.03.2021, the petitioner agreed to deposit amount @ Rs.10/- per CuM without prejudice to its rights and contentions. The lumpsum amount was deposited with respondent no. 5.

14. On 27.04.2021, respondent no. 3 – PDRO rejected the application filed by the petitioner. It was held that the water used by the petitioner, which was a distillery unit, was correctly treated as raw material and that the rate of Rs. 240/- per CuM applied by the respondents, no. 4 and 5, was justified.

15. Aggrieved by the order of the respondent no. 3 – PDRO, the petitioner filed appeal before respondent no. 2 – appellate authority under section 22(3) of the MWRRA Act. The petitioner also challenged the impugned notices. The pleadings were completed. During the pendency of the appeal, respondent no. 2 – appellate authority issued public notice inviting views from the beneficiaries to its draft proposal for further bulk water tariff order. On 23.02.2022, the petitioner submitted representation to respondent no. 2 – appellate authority in respect of said proposed tariff order, with particular reference to the

proposed distinction between water used in process and water used as raw material.

16. On 21.03.2022, respondent no. 2 – appellate authority issued the bulk water water tariff order – 2022, pertaining to the water charges for industrial use. In the said water tariff order – 2022, industries were classified as process industries and industries using water as raw material in manufacturing. Third category was for domestic use in industrial units. The rate per CuM for the three different categories was different, with the maximum rate for industries using water as raw material in manufacturing.

17. On 25.07.2022, respondent no.2 dismissed the appeal. Respondent no.2 – appellate authority held that the petitioner should be charged under industrial water use, under the category of water used as raw material. It was further directed that the petitioner should approach the State Government for its entitlement and for entering into an agreement for bulk water supply within two months from the date of the order. Reference was also made to permission granted by the Collector, Nanded under section 70 of the MLR Code, dating back to the year 1999, with a further direction to the respondents, to re-assess the water charges leviable on the petitioner. A further direction was issued to the petitioner, to pay the full amount under the impugned

notices and if no payment was made, penal action was to be taken against the petitioner.

18. According to the petitioner, the findings rendered by respondent no. 2 – appellate authority and the directions issued in the impugned order of the said authority dated 25.07.2022 effectively placed the petitioner, in a situation much worse than it was, under the impugned order dated 27.04.2021 passed by respondent no. 3 – PDRO. According to the petitioner, it suffered an adverse order in its own appeal filed before the respondent no.2 - appellate authority.

19. On 05.08.2022, respondent no. 5 issued a fresh demand notice for about Rs.232.07 Crores towards water tariff / charges against the petitioner for the period between November 2018 to June 2022, by placing reliance on water tariff order – 2018 and water tariff order – 2022. On 19.08.2022, respondents no. 4 and 5 issued the impugned final notice, demanding about Rs. 236.50 Crores towards water charges for the period November 2018 to July 2022, as per the said water tariff order.

20. On 13.09.2022, the petitioner filed writ petition before the Principal Seat of the Bombay High Court, claiming the afore-mentioned reliefs. It was numbered as writ petition no. 11168 of 2022. On 19.09.2022, respondent no. 4 issued notice to the petitioner,

threatening to disconnect the water supply of the petitioner, in case it did not deposit the amount as per the impugned notice. The aforesaid writ petition filed before the Principal Seat of the Bombay High Court, came up for hearing on 23.09.2022, when the respondents accepted notice through their counsel and an oral statement was made before the Court that they would not take coercive action till the next date of hearing.

21. On 26.09.2022, respondent no. 5 issued further notice to the petitioner, threatening to disconnect the water supply from 30.10.2022, unless the petitioner deposited an additional demand of about Rs.219.16 Crores for the period 1998-99 to October 2018, and for that purpose, the respondents placed reliance on paragraph no. 36(vi) of the operative portion of the impugned order dated 25.07.2022 passed by respondent no. 2 – appellate authority. On 09.10.2022, respondent nos. 4 and 5 issued another demand notice imposing water charges on the petitioner for the month of August – 2022 to October – 2022. The petitioner deposited some amount, without prejudice to its rights and contentions and requested respondents no. 4 and 5, not to take any coercive action.

22. On 18.10.2022, when the aforesaid writ petition was listed before the Principal Seat of this Court at Bombay, it was recorded that

the oral statement made on behalf of respondents no. 4 and 5, not to take coercive steps, would continue till the next date, subject to the petitioner depositing amount of Rs.3 Crores with respondents no. 4 and 5. The said amount was deposited. On 31.05.2024, the said writ petition was listed before the Principal Seat of this Court, when it was directed that no coercive steps would be taken against the petitioner till the next date of listing, subject to the petitioner depositing a further amount of Rs.5 Crore. The said amount was deposited with respondents no. 4 and 5 and the interim order continued to operate.

23. Subsequently, when the aforesaid writ petition came up for consideration before the Principal Seat of this Court, on 03.02.2025, it was found that even if the appellate authority i.e. respondent no. 2 happened to be located in Mumbai, the cause of action having arisen within the jurisdiction of this Aurangabad bench of the Bombay High Court, the writ petition deserved to be transferred to this Bench. Accordingly, by said order dated 03.02.2025, the writ petition was directed to be transferred, in order to be adjudicated by a Division Bench at this Bench of the High Court. The papers were transferred and thereupon, the petition stood re-numbered before this Bench as writ petition no. 2733 of 2025.

24. On 24.02.2025, the present writ petition was taken up for consideration by a Division Bench of this Court. On 18.06.2025, a Division Bench of this Court fixed the petition for hearing on 10.07.2025 @ 2:30 pm. and a statement was made on behalf of the petitioner that it would deposit a further amount of Rs.2 Crores with respondent no. 5. Accordingly, the aforesaid amount was also deposited with the said respondent.

25. It is in this backdrop, that the writ petition was taken up for hearing.

26. Learned counsel for the rival parties were heard at length.

SUBMISSIONS :

27. Mr. Zal Andhyarujina, learned Senior counsel appearing for the petitioner referred to the two water tariff orders of 2018 and 2022. He submitted that the said tariff orders were purportedly issued under section 11(d) of the MWRRA Act. It was submitted that as per the said provision, the water charges were to be fixed on the principle that they shall reflect the full recovery of the cost of irrigation management, administration, operation and maintenance of water resources project, which in this case, was the Babhali project.

28. It was submitted that said two water tariff orders of the years 2018 and 2022 did not refer to the cost of administration and maintenance of the water resource. Instead, they emphasized upon utilization of the water and in that context, classified the industrial units. It was submitted that therefore, the aforesaid water tariff orders of 2018 and 2022, violated the mandate of section 11(d) of the MWRRA Act and on this ground alone, the impugned water tariff orders deserve to be quashed and set aside.

29. It was further submitted that the water tariff order – 2018 deserves to be quashed and set aside, on the ground that principles of natural justice were violated, inasmuch as the specific requirements of the Maharashtra Water Resources Regulatory Authority (Fixed Criterion for and Issuance of Tariff Orders for Bulk Orders), Regulation, 2013, issued by the notification dated 13.08.2013, under section 31 read with section 11(d) and (u) of the MWRRA Act, were blatantly violated.

30. In this context, reference was made to the relevant portions of the said Regulation of 2013, to contend that the detailed procedure for making public a proposed tariff order, as also entertaining objections was not complied with. It was submitted that in any case, the petitioner was covered under the MWRRA Act, by the notification

issued on 31.07.2018 while the water tariff order – 2018 was already issued on 11.01.2018. Thus, the petitioner never had an opportunity to raise objection with regard to the said water tariff order – 2018.

31. Learned Senior counsel then referred to contents of the water tariff order – 2018 and submitted that the said classification of industries as per Annexure – 3, to the said water tariff order – 2018, into ‘raw material’ and ‘process industries’, for the purpose of fixing different water tariff rates was arbitrary, unjustified and unconstitutional and even *ultra vires* the provisions of the MWRRA Act.

32. It was submitted that once the regulation of 2013, classified the bulk water users as agricultural users, domestic users and industrial users, without any effort to enquire, as to the extent to which each such industry actually utilized water as ‘raw material’, further such sub-classification was unwarranted and unjustified. It was claimed that arbitrariness was writ large in the water tariff order – 2018, as industries classified as raw material industries were clubbed together as those manufacturing cold drinks, water bottle plant, breweries, mineral water or similar kind. In this context, it was claimed that the petitioner utilizes only 2% of the water as ‘raw material’ and 98% of the water is utilized for the manufacturing process which includes washing, cooling and general use for gardening, toilet etc.

It was also emphasized that a distillery or manufacturing unit like that of the petitioner, was not even mentioned in Note – 2 appended to the table found at Annexure - 3 to the water tariff order – 2018.

33. On this basis, it was contended that the basis of such classification itself was arbitrary and hence, the water tariff order – 2018, deserved to be quashed and set aside.

34. In the context of water tariff order – 2022, it was submitted that even the said order suffers from the vice of arbitrariness and hence, it is rendered unconstitutional, apart from being *ultra vires* the MWRRA Act.

35. It was submitted that Annexure - 3 to the water tariff order – 2022, also arbitrarily classified industries utilizing bulk water into process industries and raw material industries, again failing to specify the extent of utilization of water as raw material by the industry, generally classified as raw material industry. It was submitted that Notes appended to the table found in Annexure - 3 of the water tariff order – 2022, recorded that raw material industries, meaning industries using water in final product such as bottle water plants, cold drinks, alcohol, breweries, mineral water and distilleries or similar industries, would be charged @ 15 times the basic rate. It was submitted that unless the proportionate water consumption of water stood determined

in respect of each industry and unit, the levying of water charges on the basis of the said water tariff order – 2022 was rendered arbitrary and hence, unsustainable.

36. On this basis, it was submitted that even the water tariff order – 2022 also deserved to be quashed and set aside.

37. As regards both the water tariff orders of the years 2018 and 2022, a further ground of challenge was raised with regard to the categories identified in the two Annexures to the said water tariff orders of regulated water supply and partly assured water supply. It was submitted that although in the facts and circumstances of the present case, it was evident that the petitioner, at worst, could be covered only under the category of partly assured water supply, the impugned demand notices were issued by treating the petitioner as a consumer categorized under the regulated water supply category. It was submitted that the rates for the two categories differed substantially and this aspect was also ignored by both respondent no. 3 – PDRO as also respondent no. 2 – appellate authority while passing the impugned order against the petitioner.

38. Much emphasis was placed on the fact that the gates of the Babhali dam project were opened only during monsoon when the unit of the petitioner, in any case, was having water supply due to

heavy rains and that otherwise, the gates remains closed. There was only one further exception on 1st March of every year, when the gates of the dam were required to be opened as per directions issued by the Supreme Court for releasing 0.61 TMC water for the State of Telangana. It was submitted that these being admitted facts, the petitioner unit, ought to be covered under the category of partly assured water supply.

39. It was submitted that on earlier occasions when such questions were raised before this Court by the bulk consumers of water supply, this Court had directed the respondent – authorities to levy water charges after revising the rates by specifically ascertaining as to the extent of water being utilized as raw material and the extent of water being utilized for other purposes during the manufacturing activity.

40. Reliance was placed on the judgments of this Court in the case of ***Waluj Industries Association, Aurangabad and others Vs. State of Maharashtra and others*** [(***2009) 2 Mah LJ. 683***] and ***Pernod Ricard India Pvt. Ltd. Vs. State of Maharashtra and others*** (Order dated 18.03.2025 passed in writ petition no. 12841 of 2003). On this basis, it was submitted that the writ petition ought to be allowed, by quashing the impugned demand notices and directing the respondents

no. 4 and 5, to carry out such a detailed exercise and then to levy water charges on the petitioner.

41. As regards the astronomical amount demanded by the respondent no. 5 on the basis of paragraph no. 36(vi) of the operative portion of the impugned order dated 25.07.2022 passed by the respondent no. 2 – appellate authority, it was submitted that there was no basis for raising such a demand. It was submitted that the whole controversy had arisen upon the respondents no. 4 and 5, raising demands for the month of November 2018 after the petitioner was covered under the MWRRA Act as per notification issued on 31.07.2008 and, therefore, no question arose for raising demand towards water charges for the period 1998-99 to October – 2018. It was submitted that the said demand notice was wholly arbitrary and deserved to be set aside as the impugned order passed by respondent no. 2 – appellate authority, also deserved to be set aside.

42. As regards the impugned order dated 27.04.2021 passed by the respondent no. 3 – PDRO and the impugned order dated 25.07.2022 passed by respondent no. 2 – appellate authority, it was submitted that both the orders were rendered unsustainable as the specific contentions raised on behalf of the petitioner, were arbitrarily and illegally rejected. It was submitted that since the respondents no.

2 and 3 are creatures of statute and they decided the challenge raised by the petitioner on the basis of water tariff orders of the years 2018 and 2022, they were not equipped to consider the challenge of arbitrariness and unconstitutionality raised on behalf of the petitioner.

43. On the question of extent to which water could be treated as raw material in the unit of the petitioner manufacturing ethanol and IMFL, the respondents no. 2 and 3 wrongly placed reliance on report prepared by the National Environmental Engineering Research Institute (NEERI).

44. It was submitted that the said report, in the first place, was not served upon the petitioner when the proceedings were undertaken before the respondent no. 3 - PDRO and a copy thereof was furnished only when the appeal came up for consideration before respondent no.2 - appellate authority. It was submitted that in any case, the said report pertained to the year 2010, prepared for the Maharashtra Industrial Development Corporation in respect of evaluation and benchmarking of water requirements during manufacturing of soft drinks, beverages and liquor. The petitioner was never put to notice when the report was prepared.

45. Learned Senior counsel for the petitioner submitted that the contents of the said report in respect of certain specific breweries

and distilleries, could not be accepted as gospel truth. It was submitted that in any case, the said report itself indicated that only about 7% of total water consumption, could be said to be towards raw material for manufacturing liquor. The report broadly indicated that 65% of the water consumption could be said to be commercial and balance 35% for other activities. The said report could not be the basis for holding against the petitioner, so long as the actual extent of utilization of water as raw material in the specific manufacturing unit of the petitioner was not ascertained in an objective and scientific manner. On this basis, it was submitted that reliance placed on the report of NEERI was wholly misplaced.

46. As regards the second impugned order passed by the respondent no. 2 - appellate authority on 25.07.2022, it was submitted that the error as regards failure to ascertain the actual consumption of water towards raw material was again committed by the said appellate authority and additionally, the said authority went well beyond the controversy that arose in the facts and circumstances of the present case. It was submitted that the respondent no.2 - appellate authority had no business to discuss matters pertaining to water consumption prior to the year 2018, as the dispute arose only after the respondent nos. 4 and 5 raised bill towards water charges for the month of November 2018, in terms of impugned notices dated 14.12.2018 and

21.12.2018. It was submitted that there was no question of considering the question of alleged dues for the period prior to the year 2018. The petitioner had paid all dues in terms of the demands made by the Collector, Nanded in terms of permissions granted to the petitioner to lift water from the Godavari river under the provisions of the M.L.R. Code. Hence, it was submitted that the operative portion of the order passed by respondent no. 2 - appellate authority, particularly, paragraph no. 36(vi) thereof, was wholly erroneous and hence unsustainable.

47. It was further submitted that the respondents are not justified, in contending that the petitioner failed to raise any objection with regard to the tariff orders of the 2018 and 2022 before the respondent no. 2 - appellate authority and respondent no. 3 - PDRO, for the reason that the contentions regarding unconstitutionality could have been raised only before this Court under writ jurisdiction. It was submitted that the aforesaid two respondents are obviously bound by the water tariff orders and, therefore, there was no scope for raising such objection before the said authority. Nonetheless, the petitioner is entitled to raise such a contention before this Constitutional Court.

48. As regards the contention raised by the respondents pertaining to delay and laches in filing the present writ petition, it was

submitted that the petitioner had earlier approached this Court by filing writ petition no. 2468 of 2019, which was eventually disposed of on 20.06.2019, granting liberty to the petitioner to approach respondent no. 3 - PDRO, to raise its grievances. Thereafter, the said respondents rejected the claim of the petitioner, against which the petitioner filed appeal before the respondent no. 2 - appellate authority and upon dismissal of appeal on 25.07.2022, the petitioner filed the writ petition before the Principal Seat of this Court on 13.09.2022, thereby, demonstrating that there is no question of delay and laches.

49. Reliance was placed on the judgment of the Supreme Court in the case of ***Motor General Traders and another V. State of Andhra Pradesh and others*** (***1984 (1) SCC 222***), to contend that even otherwise a constitutional challenge can be raised at any point of time.

50. Learned Senior counsel for the petitioner further submitted that the respondents cannot be permitted to distinguish the judgments of this Court in the cases of ***Waluj Industries Association, Aurangabad and others Vs. State of Maharashtra and others*** (supra) and ***Pernod Ricard India Pvt. Ltd. Vs. State of Maharashtra and others*** (supra), on the ground that in the said cases, the petitioners had entered into agreements for water supply. In the

present case, no sooner the lifting point of water of the petitioner was covered under the provisions of the MWRRA Act, dispute arose between the petitioner and the respondents, which culminated in the present writ petition. Therefore, it was submitted that agreement between the parties could not be executed as the petitioner and the respondents could not come around to a common ground.

51. On a query put by this Court, that even if the contentions of the petitioner were to be accepted and directions were required to be issued to the respondents, to reconsider the demand notices for supply of water, as to what would be the amount required to be paid by the petitioner when the exercise was being undertaken, it was submitted that the petitioner was ready and willing to deposit further amount. In that context, a chart was tendered, stating various scenarios and the extent to which further payments could be made, subject to the same being adjusted towards final bills.

52. Learned Senior counsel for the petitioner submitted that if the version being canvassed on behalf of the petitioner that only 2% of the water was being utilized as raw material was accepted, no further amount was required to be deposited. But, it was subsequently submitted that the petitioner would abide by the directions that may be issued by this Court in that regard.

53. On the other hand, Mr. Pratap P. Mandlik, learned counsel appearing for the respondent no. 2 i.e. the Maharashtra Water Resources Regulatory Authority, submitted that the writ petition itself is not maintainable as there are several disputed questions of facts that arise in the matter. It was submitted that the conduct of the petitioner was not above board and that it had utilized water without making payment for the same. It was further submitted that while the petitioner was granted permission in the year 1995 for lifting water for agriculture purposes, it was misused for industrial purpose i.e. for production of liquor. Permission for industrial use was granted for the first time in the year 2003. Learned counsel made reference to Government resolution, classifying water used by various industrial units, including those manufacturing alcohol, indicating that higher water charges were leviable for such use.

54. Much emphasis was placed on the width of power available with the respondent no. 2 - appellate authority under the provisions of the MWRRA Act, particularly, section 11(d) thereof, for establishing a water tariff system. Learned counsel for respondent no. 2 extensively referred to the bulk water tariff orders of 2018 and 2022, to justify the policy adopted therein. It was submitted that all the requirements specified in the Regulation of 2013 with regard to

adherence to principles of natural justice by inviting objections etc., were fully complied with before issuing the said tariff orders. Reference was made to the distinction between raw material industries and processing industries under the said orders and it was emphasized that the classification was logical and no fault could be found with Annexure – 3, to both the water tariff orders.

55. Much emphasis was placed on the conduct of the petitioner in failing to deposit amounts either in this Court or with respondents no. 4 and 5, despite the fact that the outstanding dues had now reached the figure of more than Rs.400 Crores. The orders passed by the respondent no. 3 - PDRO as well as respondent no. 2 - appellate authority were claimed to be justified and reliance placed on report of NEERI was sought to be appropriate. It was submitted that the argument with regard to the extent of water being used as raw material was only with a view to mislead this Court and, therefore, the writ petition deserved to be dismissed.

56. Mr. Uday Warunjikar, learned counsel appearing for the other respondents submitted that the said respondents have ample power under the provisions of the Maharashtra Irrigation Act, 1976, the MLR Code and the MWRRA Act, to regulate water supply from natural resources like river Godavari and to issue appropriate demands

towards water charges. It was submitted that the petitioner was granted permission on 19.05.1995, to use the water only for agricultural purpose, but the petitioner illegally used it for industrial purpose. It was emphasized that permission for industrial use of the water supply was granted on 01.02.2003 and it was renewed annually. It was submitted that after the lifting point of water of the petitioner stood covered under the MWRRA Act in the year 2018, the petitioner failed to execute agreement with the respondents for supply of water and, therefore, the petitioner was and is liable to pay penalty for such conduct.

57. Learned counsel for the respondents referred to Government resolutions dated 12.09.2001, 28.11.2002 and 31.07.2006, to contend that upon construction of Babhali dam in the year 2013, the lifting point of water of the petitioner, which is downstream, became a regulated water supply point and, therefore, the petitioner cannot be heard to say that it was provided only partly or partially regulated water supply. It was further submitted that the petitioner failed to challenge the bulk water tariff orders of the year 2018 and 2022, when writ petition no. 2468 of 2019 was filed before this Court. The said writ petition was disposed of with liberty to the petitioner to approach the respondent no. 3 – PDRO, to raise its grievances and even before the said respondents, no challenge was raised to the water tariff order - 2018.

58. During the pendency of the appeal before the respondent no. 2 - appellate authority, the water tariff order - 2022 was issued and yet, the petitioner failed to challenge the said order in the pending appeal before the respondent no. 2. Hence, the petitioner cannot be permitted to raise challenge against the water tariff orders of the year 2018 and 2022, for the first time in this writ petition. The challenge suffers from delay and laches, apart from the principle of estoppel operating against the petitioner.

59. Much emphasis was placed on the conduct of the petitioner, in continuing to lift water without making appropriate payments even prior to the year 2018 and further lifting the same in the absence of execution of agreement for such water supply. It was emphasized that the petitioner was enjoying interim order in this proceeding after having deposited only about Rs. 10 Crores while the demand notices challenged in this writ petition were for huge amount of about Rs.240 Crores when the writ petition was filed in September 2022. The current outstanding demand has reached a huge figure of about Rs.450 Crores.

60. It was submitted that the orders of both the respondent no. 3 - PDRO and respondent no. 2 - appellate authority do not deserve any interference as they are based on a proper interpretation of the

water tariff orders of 2018 and 2022. NEERI report is a public document and, therefore, the findings therein, can certainly be relied upon, demonstrating that the present writ petition deserves to be dismissed. The principles of natural justice were fully complied with, when the water tariff orders of 2018 and 2022 were issued. It was submitted that the water lifting point of the petitioner is downstream and not in the backwaters, thereby demonstrating that the petitioner cannot escape the liability of payment of water tariff in terms of the demand notices issued, as per the provisions contained in the water tariff orders of the year 2018 and 2022. It was emphasized that the Babhali dam is about 4 km above or upstream and, therefore, this is a clear case of regulated water supply available to the petitioner.

61. Learned counsel appearing for the said respondents further placed emphasis on the fact that the burden was on the petitioner to make good its case that only 2% of the water picked up by it from river - Godavari, was being used for manufacturing of alcohol. The NEERI report indicated otherwise for similar industries and in the absence of the petitioner placing any material on record in terms of an expert report or otherwise, it cannot lie in the mouth of the petitioner that the demand notices were unjustified.

62. It was further submitted that classification as regards the nature of water supply can be found in Government resolutions issued from 2002 onwards, as the classification is based on the existence of a dam or otherwise as also the water lifting point being either upstream or downstream. All these factors taken into consideration, clearly show that the water lifting point of the petitioner is at a place where regulated water supply is available throughout and, therefore, the petitioner cannot escape the liability to pay water tariff / charges as per the demand notices issued by respondents no. 4 and 5. By referring to section 11(d) of the MWRRA Act, it was submitted that water charges can be levied for full recovery of the cost of the irrigation management, administration, operation and maintenance of water resources project, which in this case, is Babhali dam. The petitioner enjoying regulated water supply, cannot be permitted to avoid the water charges that have been levied strictly in accordance with law.

63. It was submitted that since the petitioner failed to deposit or pay the amounts as demanded, penalty is inevitable and, therefore, the petitioner ought to pay the entire amount due, even if this Court considers directing the respondents to undertake an exercise for reconsidering the demand notices on the determination of the extent of water being actually utilized as raw material by the petitioner.

64. In this backdrop, on the last query put by this Court with regard to the amount that the petitioner can be asked to deposit when the said exercise is being carried out, a chart was submitted, stating various scenarios wherein the petitioner would be liable to deposit further amounts. It was submitted that the aforesaid respondents are insisting upon depositing the entire amount due till date, which comes to about Rs.446 Crores. On this basis, it was submitted that in the first place, the writ petition ought to be dismissed and even if this Court is of the opinion that a further exercise needs to be carried out, the afore-mentioned entire amount due must be paid by the petitioner to respondents no. 4 and 5.

CONSIDERATION AND FINDINGS :

65. This Court has considered the rival submissions. Elaborate arguments have been made on various issues and, therefore, it is necessary to consider each and every issue before reaching any conclusion in the matter.

66. The bulk water tariff orders of the year 2018 and 2022 are required to be considered, not only for the classification of industries and the categories of water supply specified therein, but also, as to whether the said tariff orders could be said to be unconstitutional or *ultra vires* the provisions of the MWRRA Act. If the water tariff orders

are found to be unconstitutional or *ultra vires*, then the whole basis of the demand notices issued by the respondents no. 4 and 5, would be destroyed and the writ petition would have to be allowed. But, if it is held otherwise, still, the basis of the demand notices issued against the petitioner within the four corners of the water tariff orders will have to be examined, to reach any conclusion in the matter.

67. At the outset, this Court is of the opinion that the issue regarding liability to pay amounts towards water charges prior to 2018 needs to be considered. The material on record clearly shows that the entire controversy arose in the present case when respondents no. 4 and 5 issued the impugned demand notice dated 14.12.2018 for the month of November 2018, followed by impugned bills dated 31.12.2018 and 10.01.2019 for the month of November 2018. It is crucial to note that while the impugned bill towards water charges dated 31.12.2018 demanded an amount of about Rs.14.13 Crores, the impugned bill dated 10.01.2019 demanded amount of Rs.20.75 Crores. Both these impugned bills show that there were zero (0) arrears payable by the petitioner. The amount demanded towards penalty was on the ground of lifting water without installation of water meter and due to failure in executing an agreement for water supply. The subsequent impugned water bills / demand towards water charges issued after the appeal was dismissed by respondent no. 2 - appellate authority on

19.08.2022, show that amount of about Rs.237 Crores was due, which included arrears.

68. Even the aforesaid impugned water charges bill pertained to the period between November 2018 to July 2022. It was thereafter that on 26.09.2022, that the respondent no. 5, for the first time, on the basis of operative portion of the order of the respondent no. 2 - appellate authority, at paragraph no. 36(vi), raised further demand of arrears to the extent of about Rs.209 Crores from the petitioner for the period between 1998-1999 to October 2019.

69. We are of the opinion, for reasons that shall be recorded herein-below, that the respondent no. 2 - appellate authority travelled beyond the scope of the dispute and controversy between the parties by proceeding on the basis that there were some arrears due towards water charges payable by the petitioner even prior to October / November – 2018, while that was not even within the scope of the controversy before respondent no. 3 - PDRO.

70. In any case, the trigger point for dispute was the issuance of bills by respondents no. 4 and 5 against the petitioner on 31.10.2018 and 10.01.2019 which showed zero (0) arrears for the past. We find substance in the contention of the petitioner that the dispute in the present case is limited to amount payable by the petitioner towards

water charges from October / November 2018 and that it does not pertain to the past period.

71. Therefore, this Court is proceeding to consider the rival contentions only in respect of amount payable by the petitioner for consumption of water in its manufacturing unit / industry from October / November 2018 onwards. The respondents have failed to make out their case for considering the past period, simply for the reason that no such demands were ever made against the petitioner for the past periods until the controversy reached the respondent no. 2 - appellate authority, where the petitioner had challenged the order passed by the original authority i.e. respondent no. 3 - PDRO.

72. It is in this backdrop that the rival contentions have been considered in the facts and circumstances of the present case.

73. The bedrock of the demand notices and the impugned water charges bills issued by the respondents no. 4 and 5 are the bulk water tariff orders of the years 2018 and 2022. The petitioner has attacked these very tariff orders, on the ground that they are unconstitutional, arbitrary and even ultra vires the provisions of the MWRRA Act. It is to be noted that MWRRA Act was enacted for establishing respondent no. 3 - Maharashtra Water Resources Authority for the purpose of regulating the water resources within the

State of Maharashtra. It was to facilitate and ensure judicious, equitable and sustainable management as also allotment and utilization of water resources, with a further purpose of fixing rates for use of water for agriculture / industrial / drinking and other purposes.

74. The Regulation of 2013 issued by exercising powers under the MWRRA Act defined “bulk water users” and there can be no dispute about the fact that the petitioner is indeed a bulk water user of water resources. There is also no serious dispute about the fact that the manufacturing unit of the petitioner uses water as an industrial user. Section 11 of the MWRRA Act pertains to powers, functions and duties of the respondent no. 3 - appellate authority. Section 11(d) thereof, empowers the respondent no. 3 - authority, to issue such bulk water tariff orders, to establish water operation systems, fixing criterion of water charges, based on the principle that water charges shall reflect the full recovery of the cost of the irrigation management, administration, operation and maintenance of water resources projects.

75. The petitioner has vehemently contended that the subject water tariff orders of the years 2018 and 2022 are *ultra vires* section 11(d) of the MWRRA Act, as the basic principle contained therein has been ignored, which is that the water charges must reflect the recovery of the cost of establishment, administration and maintenance of water

resources projects. It is claimed that the water tariff orders of the year 2018 and 2022 specify the rates based on the manner in which the water resources are utilized and there is no reference to the aforesaid basic principle pertaining to recovery of costs regarding water resources projects. A perusal of the Water Tariff Order – 2018 shows that it recorded that the average estimated cost of operation and maintenance of water resources projects for the period 2016 to 2019, was Rs. 1412.12 Crores and estimated cost for the year 2017-18 was Rs.1406.53 Crores. After referring to such costs, the respondent no. 2 - authority issued the said water tariff order.

76. The water tariff order of the year 2022 issued on 29.03.2022, also referred to section 11(d) of the MWRRA Act and the need for recovering full costs of such water irrigation resource projects and thereupon, issued the detailed order.

77. The aforesaid contents of both the bulk water tariff orders of the year 2018 and 2022, show that the respondent no. 2 - authority was fully alive to the principle incorporated in section 11(d) of the MWRRA Act and after referring to the already incurred expenditure / cost and the provision for such expenditure, issued the detailed orders specifying the manner in which the various bulk water users would be charged for supply of water. Therefore, we do not find any substance

in the contention raised on behalf of the petitioner that the aforesaid water tariff orders are *ultra vires* section 11(d) of the MWRRA Act. The contention is rejected.

78. Section 11(d) of the MWRRA Act empowers the respondent no. 2 - authority to fix the criterion for water charges. A perusal of the bulk water tariff orders of the year 2018 and 2022 shows that respondent no. 2 - authority has indeed specified the criterion for fixing water charges. Therefore, it cannot be said that the respondent no. 2 - authority travelled beyond the power available to it under section 11(d) of the MWRRA Act, to specify such criterion for fixing water charges. On this count also, the petitioner has failed to demonstrate that the said water tariff orders can be said to be bad in law.

79. The petitioner has raised a specific contention that the basis for classification of bulk water users for levying different rates of water charges is arbitrary and that therefore, the water tariff orders are rendered unconstitutional. The basis of the classification is attacked on the ground that industries are not classified on an intelligible differentia and that industries having different requirements of utilization of water have been clubbed together, rendering the water tariff orders arbitrary and unsustainable.

80. In order to consider the said challenge raised on behalf of the petitioner, we have perused both the water tariff orders. There is no dispute about the fact that Annexures – 3, to the said water tariff orders are the bone of contention and, hence, they are required to be considered in some detail.

81. Annexure - 3 to bulk water tariff order - 2018 fixes bulk water rates for industrial use. In the column pertaining to rates for industrial use, the industries have been classified into ‘process’ and ‘raw material’. While water charges for process industries are fixed at lesser rate, depending upon the category pertaining to nature of water supply, i.e. regulated water supply or partly assured water supply, for the raw material industries, the rates are exponentially high for the afore-mentioned categories. It is obvious that industries classified as raw material industries, have to pay much higher water charges as compared to process industries. In fact, a particular industry may use water as a raw material as well as for process and, therefore, water charges need to be proportionately recovered on the basis of the extent to which the water is utilized, either as raw material or for process.

82. Note 2 stated in the aforesaid Annexure to the bulk water tariff order - 2018, specifies that industries using water as raw material,

means industries manufacturing cold drinks, beverages, mineral water or similar kind. The petitioner has raised a strong objection to the said note, on the ground that its manufacturing unit being a distillery, is not specifically included and the respondent no. 2 - authority, by a broad categorization, has included almost all industries under the general category of raw material industry.

83. We find that the classification based on ‘process’ and ‘raw material’, in itself cannot be said to be arbitrary. It is crucial to note that the columns specifying two different rates of water charges for ‘process’ on the one hand and ‘raw material’ on the other, have been stated under the head of standard rates for industrial units.

84. Thus, the water charges for the two categories ‘process’ and ‘raw material’, have to be levied on ascertaining the actual use that an industrial unit would put the water picked up from the water resource, which in this case, is the river Godavari.

85. The respondents no. 4 and 5 while raising bills for utilization of water under the said water tariff order, were required to conduct an enquiry with regard to the actual manner in which the water lifted by the industrial unit, was put to use. Note 2 found in the aforesaid Annexure to the water tariff order, indicates industries manufacturing cold drink, breweries, mineral water or similar kind of

use of water as raw material. Even if that be so, the water charges could be levied only upon ascertaining the actual proportion of water used by such industries as raw material for the final product, as opposed to the extent of water actually used for other processes. Upon reading the bulk water tariff order – 2018 and Annexure - 3 appended thereto in the aforesaid manner, it becomes clear that the said tariff order, cannot be said to be suffering from the vice of arbitrariness, unconstitutionality or illegality.

86. It is a different matter that while putting into operation the said tariff order and generating water charges bills, respondents no. 4 and 5 may have erroneously proceeded to treat specific industries in one sweep regarding utliization of the entire water lifted from the water resource, as being utilized for raw material. But, that in itself, cannot render the water tariff order arbitrary and unconstitutional.

87. Similarly, Annexure – 3, to the bulk water tariff order – 2022, has to be read to mean that the rate fixed for utilization of water as raw material, would be on the basis of the actual proportion of water utilized for the said purpose. Annexure – 3, to the said water tariff order – 2022, shows that processing industries and raw material industries have been separately defined. Processing industries have been stated as industries for cold drinks, washing and for other

purposes while raw material industries are stated to be those using water in the final product as consumptive use for spirit, alcohol, ethanol, beverages and distilleries or similar industries. In the said water tariff order, distilleries like the manufacturing unit of the petitioner, are specifically covered. Even if the industries have been defined in the aforesaid manner, and separate water charges rates are specified in Annexure - 3 to the water tariff order of the year 2022, that in itself cannot render the said water tariff order arbitrary, unconstitutional or irrational. There are always industries which utilize water for both purposes and it would be for the respondents no. 4 and 5, to raise water charges bills by enquiring into and ascertaining the extent to which water is utilized as raw material, as opposed to water utilized for processing.

88. We are unable to agree with the petitioner that the bulk water tariff order – 2022 has to be held as arbitrary, unconstitutional or irrational, so long as it is dynamically operated in the aforementioned manner, by respondents no. 4 and 5.

89. We find an intelligible differentia, in the manner in which said water tariff orders make classification between utilization of the water resources for two purposes. We have read the water tariff orders in the afore-mentioned manner, for the reason that this Court on earlier

occasions, has called upon the respondents to reconsider the water charges bills after conducting an exercise of ascertaining the extent of water utilized as raw material, to recover charges at higher rates and to recover water charges at normal or lower rates for the remaining portion of the water utilized for other purposes during the manufacturing activity.

90. Therefore, we do not accept the contention of the petitioner that the bulk water tariff orders of the years 2018 and 2022 are required to be struck down as being arbitrary, unconstitutional or irrational.

91. This takes us to the contention raised on behalf of the petitioner that its case is covered under the category of partly assured / regulated water supply, as opposed to the regulated water supply. In the present case, the aforesaid Babhali dam was constructed and made operational sometime around 2013-2014 and since we are concerned with the dispute pertaining to the period October / November – 2018 onwards, there can be no dispute about the fact that the aforesaid dam and its functioning is required to be taken into consideration while rendering finding on the aforesaid contention of the petitioner.

92. In this context, location of the water lifting point of the petitioner is crucial. It is undisputed that the said lifting point of water is at about 4.5 km. downstream of the aforesaid dam. We find force in the contention raised on behalf of the respondent – State authorities that when the dam has been already constructed and the water lifting point of the petitioner is at a distance of about 4.5 km. downstream from the dam, the petitioner can be covered under the category of regulated water supply with transmission losses. Reference to Government resolution dated 12.09.2001, on behalf of the State authorities, appears to be relevant as it distinguishes between a location where water supply is regulated by way of construction of dam, as opposed to a location whether there is no dam and supply of water is dependent only on nature and the flow of the water.

93. It cannot be disputed that construction of Babhali dam regulates the flow of water on river – Godavari. In this context, the petitioner has placed much emphasis on the fact that water is released from the dam and the gates are opened only during the monsoon season and also when the gates are mandatorily required to be opened on 1st March of every year for releasing 0.6 TMC water for the State of Telangaga. It is claimed that during monsoon, in any case, there is enough water in the river at the water lifting point of the petitioner. But, we find that the petitioner cannot claim that the gates of the dam are

opened and water is released only during monsoon and on 1st March every year, for the reason that opening of gates and releasing of water depends upon the accumulation of water through the year in the dam. It is a dynamic process and we find substance in the contention raised on behalf of the respondent – State authorities that water is released from the dam periodically, demonstrating that water is made available at the lifting point of the petitioner, which is hardly about 4.5 km. downstream from the dam.

94. There is substance in the contention raised on behalf of the respondents that the location of the water lifting point of the petitioner, about which there is no serious dispute, clearly demonstrates that the petitioner has to be categorized as a bulk user of water who is enjoying regulated water supply and that it cannot be categorized under partly assured / regulated water supply. The contentions raised on behalf of the petitioner, in this regard are rejected.

95. The petitioner raised a serious challenge to the aforesaid bulk water tariff orders of the year 2018 and 2022 on the ground that principles of natural justice were violated, as the petitioner could not get a reasonable opportunity to raise objection with regard to said water tariff orders. In this regard, elaborate submissions have been

made on behalf of the respondent – authorities, to demonstrate how the draft tariff orders were placed in public domain in terms of the Regulation of 2013, affording an opportunity to the public at large, to raise objections.

96. As regards the bulk tariff order of the year 2018 issued on 11.01.2018, we find that the water lifting point of the petitioner stood included in the jurisdiction of the MWRRA Act only on 31.07.2018, as per the notification issued by the respondent no. 1 – State under section 11 of the Maharashtra Irrigation Act, 1976. It is also noted herein-above that the dispute or controversy in the present case concerns water charges dues of the petitioner from October / November 2018 onwards. Since the water lifting point of the petitioner was covered under the MWRRA Act, with effect from 31.07.2018, its grievance pertaining to violation of principles of natural justice in respect of the bulk water tariff order of 2018 issued earlier on 11.08.2018, cannot be considered.

97. After being covered under the said tariff order pertaining to the year 2018, the petitioner never raised any grievance with regard to the same. It is a matter of record that the petitioner did not even invoke clause 15 of the aforesaid bulk water tariff order of 2018, which provides for an opportunity to such bulk water users to approach the

respondent no. 2 – appellate authority, if there is any difficulty in implementing conditions specified in the order.

98. As regards bulk water tariff order – 2022, we find that the same was issued when the appeal filed by the petitioner was pending before the respondent no. 2 – authority. It is an admitted position that before issuing the said tariff order of the year 2022, on 29.03.2022, the respondent no. 2 – authority had issued public notice inviting views from the public at large.

99. The respondent no. 2 has placed before this Court details of the exercise carried out in terms of the Regulation of 2013, for placing such draft proposal in the public domain for inviting objections, if any. It is the case of the petitioner that it had submitted a representation in that regard and, therefore, we find that the ground of violation of principles of natural justice in respect of the water tariff order of the year 2022, cannot be sustained in the facts and circumstances of the present case.

100. Therefore, the said contention for challenging the bulk water tariff orders of the year 2018 and 2022, is rejected.

101. But, when we peruse the record to try and understand the basis on which the impugned demand notices and impugned water

charges bills have been issued by the respondents no. 4 and 5, we find that the said respondents have treated the case of the petitioner as one wherein entire water lifted by the petitioner is utilized as raw material for manufacturing its end product. Evidently, the said respondents have not undertaken any exercise to ascertain the extent to which the consumption of water by the manufacturing unit of the petitioner in its manufacturing activity is towards raw material and the extent to which it is utilized for other purposes like washing, cooling etc. during the process of manufacturing.

102. While the petitioner claims that it is utilizing only 2% of the water lifted from the river as raw material for its end product of IMFL and other products, the respondents no. 4 and 5 have proceeded on the basis that the entire water lifted by the petitioner is used as raw material. In the absence of an appropriate enquiry and exercise to ascertain the nature and extent of utilization of the water lifted by the petitioner, the act on the part of the respondents no. 4 and 5, in issuing the demand notices and impugned water charges bills is found to be arbitrary and unsustainable.

103. Much emphasis has been placed by the respondents on the report of NEERI of the year 2010. It is an admitted position that the said report did not cover the manufacturing unit of the petitioner and it

appears to have been commissioned by the MIDC in the context of the utilization of water in manufacturing processes concerning the mineral water, beverages and liquor industries. There is substance in the contention raised on behalf of the petitioner that the respondents ought to have furnished a copy of the report of NEERI, on the basis of which certain adverse inferences were drawn against the petitioner. A copy of the said report was not furnished to the petitioner at the first instance and it was only at the appellate stage that the same was made available to the petitioner.

104. Even if the said report is to be taken into consideration, we find that it refers to certain specific industrial units manufacturing liquor. The said report at paragraph 4.3.4, has given certain findings with regard to the liquor industries ,which use water both as raw material and also for different processes. It is recorded that the final product of the liquor industry utilizes about 7% of the total water consumption. On this basis, it is contended on behalf of the petitioner that even in a worst case scenario, the utilization of the water as a raw material would stand at 7%.

105. The report further records that 35% of the water can be considered as other than commercial use of water. Such finding in the report cannot be the basis for the respondents, to support the

impugned demand notices and impugned water charges bills that have treated the petitioner's case as one where the entire water lifted by the petitioner, has been utilized as raw material. The petitioner has clearly succeeded in demonstrating that even if the respondents are entitled to raise demand notices and water charges bills on bulk water tariff orders of the year 2018 and 2022, such charges cannot be levied on the basis that the entire water lifted by the petitioner was utilized as raw material for its end product.

106. At this stage, it would be appropriate to refer to the two judgments, upon which the petitioner has placed much reliance. These are judgments in the cases of ***Waluj Industries Association, Aurangabad and others Vs. State of Maharashtra and others*** (supra) and ***Pernod Ricard India Pvt. Ltd. Vs. State of Maharashtra and others*** (supra)***.***

107. In the case of ***Waluj Industries Association, Aurangabad and others Vs. State of Maharashtra and others*** (supra), it was held that the Corporation therein would be well within its rights to recover charges at higher rates in respect of the portion of the water used as raw material in the manufacturing activity and that the industrial units would be entitled to pay water charges at normal rates

in respect of the portion of the water used for allied activities. The writ petition was disposed of in the said case, in the following manner :

> *"19. We decline to quash the notices. However, the petitions can be disposed of with the following directions:*
>
> *(i) Respondent Maharashtra Industrial Development Corporation shall be at liberty to levy water charges at revised rates. However, so far as portion of water supplied, which is being used for manufacture of liquor, beverages, etc., wherein water is used as a raw material, respondent-Corporation would be within their right to recover water charges at higher rates, whereas the portion of water utilised for the purposes other than the manufacturing activity as raw materials, respondent-Corporation shall have to recover water charges at normal rates.*
>
> *(ii) Respondent-Corporation may tender revised bills taking into consideration the distinction made above.*
>
> *(iii) Respective petitioners may make suitable representations to the respondents in respect of revision of water rates effective from 2002 onwards and on receipt of the representations, respondents shall take appropriate decision on considering grievances raised by respective petitioners."*

108. In the subsequent order passed in **Pernod Ricard** (supra), a Division Bench of this Court specifically took into consideration the aforesaid bulk water tariff order of the year 2018 issued on 11.01.2018. In the said order, it was observed as follows :

> *"7. We find substance in the contention as urged on behalf of the petitioner that respondent no.3, in issuing the bills to the petitioner, was required to take into consideration the effect to be given to the tariff order dated 11 January 2018, when the tariff order stands specifically incorporated in the agreement as entered with the petitioner. This clearly demonstrates that for the period in question, the tariff as applicable would be separate for 'processes' and 'raw material' as noted by us from Annexure-3/Table No.1 (supra). Such exercise has not been undertaken.*

8. We are also informed by Mr. Khambata that all the bills which were issued to the petitioner were paid under protest and therefore, there is no prejudice whatsoever to the respondents as the payments have been received by the respondents in regard to the bills in question. Considering such factual position, we are of the opinion that in the event, the stand of the petitioner that the amounts of the bills which are in fact paid by the petitioner, were excessive and not in accordance with the tariff order is accepted by respondent No.3, the petitioner would be either entitled to refund or for adjustment of amount in future bills. Thus, it is imperative that an appropriate exercise in accordance with law needs to be undertaken by respondent no.3 to issue the bills as per the mandate of the tariff order.

9. In so observing we find that Mr. Khambata's reliance on the decision of this Court in M/s. Waluj Industrial Association vs. State of Maharashtra [(2009) 2 Mah LJ 683] is apposite. In such decision, the Division Bench has held that the respondent therein was not permitted to levy water charges at uniform rate on the industrial units engaged in the activity of manufacturing liquor and beverages, as a distinction was required to be made for use of water by the concerned industrial establishments as a 'raw material' for manufacturing finished product as well as user of water by the industrial units for "allied activities." The Court observed that in respect of portion of the water used in manufacturing activity as a raw material, the respondent therein would be within its right to recover charges at higher rates, whereas in respect of portion of water used for allied activities was concerned, the industrial units would be made to pay water charges at normal rates. It was held that the respondent cannot be permitted to recover water charges at higher rates treating use of water supplied to the concerned industrial units in its entirety as user of water as a raw material. The Court also held that the industrial units would be required to pay water charges in respect of portion of the water used as a raw material at higher rates, whereas in respect of portion of the supply of water, which is utilised for allied activities, such manufacturer shall not be made to pay the water charges at higher rates and should have been charged at normal rates. The Court observed that distinction in that regard would be required to be made by the authorities and accordingly directions were issued for revised bills to be issued to the industrial units. The view taken by the Court in the said decision, in our opinion, would apply to the facts of the present case and more particularly, as a specific tariff order dated 11

January 2018 was in operation and accepted to be applicable under the agreement in question.

10. In the light of the above discussion, in our opinion, it is in the interest of justice that the the petition is disposed of in terms of the following order:-

ORDER

"i. Respondent no.3 shall undertake an exercise to reconsider the water supply bills as issued to the petitioner for the period 01 February 2018 to 31 December 2021 being the period covered by an agreement dated 11 May 2021 and the subsequent agreement dated 28 June 2021 which is for the period from 01 November 2020 to 31 October 2026, by applying the provisions of the tariff order dated 11 January 2018 and more particularly Annexure-3 thereof, and after undertaking an appropriate exercise in applying the rates as prescribed by the Tariff Order on the water used for "processes" and "raw material", issue appropriate bill(s) to the petitioner for the relevant period. Let this exercise be undertaken and completed within a period of two months from today.

ii. In the event respondent no.3 comes to a conclusion that the amounts which are paid by the petitioner are excess of the amounts which ought to have been recovered as per tariff order, respondent no.3 shall grant a refund of the said amount or adjustment of the amount in the future bills.

iii. All contentions of the parties in regard to the exercise which would be now undertaken by respondent no.3 are expressly kept open.

iv. In view of the aforesaid orders, the impugned order dated 29 March 2023 passed by the Maharashtra Water Resource Regulatory Authority is set aside, with liberty to the respondents to pass a fresh order and/or issue fresh bills.

v. Writ petition stands disposed of accordingly. No costs."

109. In the present case also, we find that the respondents no. 4 and 5 failed to carry out the exercise of determining the extent to

which the water is utilized in the manufacturing unit of the petitioner towards raw material and the extent to which it is utilized for other purposes. Therefore, we are inclined to issue appropriate directions, as the impugned water charges bills have been issued without carrying out any such exercise.

110. We do not find any substance in the contention raised on behalf of the respondents that the aforesaid judgments cannot be relied upon, for the reason that in those cases, agreements for water supply had been executed between the parties while the petitioner in the present case did not execute any such agreement.

111. We find that respondents no. 4 and 5 in the present case issued the first impugned demand notice and the impugned water charges in December – 2018 / January – 2019. At that point in time, the dispute between the parties was triggered and the petitioner filed the earlier writ petition bearing writ petition no. 2468 of 2019. The litigation between the parties culminated in the present writ petition. In such a factual scenario, absence of an agreement between the parties cannot be a ground to distinguish the aforementioned judgments, upon which the petitioner has correctly relied. The said contention of the respondents, is rejected.

112. We also do not find any substance in the contention raised on behalf of the respondents that the petitioner cannot be permitted to raise challenge against the bulk water tariff order of the year 2018 and 2022 in this writ petition, as they had failed to raise such challenge at an earlier point in time. It is already noted hereinabove, that respondent no. 3 – PDRO and respondent no. 2 – appellate authority did not have jurisdiction to consider such a challenge and it is only before the Constitutional Court that the petitioner could raise such a challenge.

113. There is also no substance in the contention raised on behalf of the respondents that the petitioner having failed to produce any evidence or expert evidence regarding its contention pertaining to water being used as raw material only to a limited extent, it cannot claim any relief in the present writ petition. When the respondents no. 4 and 5 are raising demands and issuing water charges bills on the basis of the aforesaid bulk water tariff orders, it is for the respondents to justify the basis of their claims. Since this Court has found that the said respondents could not have treated the entire water lifted by the petitioner as being used for the purposes of raw material for its end product, it would be for the said respondents to carry out the exercise to ascertain the proportionate utilization of water as raw material and

for other processes, before issuing appropriate water charges bills against the petitioner.

114. This Court has also considered the contentions raised on behalf of the petitioner and the respondents as regards the amount that the petitioner can be called upon to deposit, since this Court intends to direct the respondents to carry out a fresh exercise indicated herein-above. The respondents will have to carry out the aforesaid exercise by treating the petitioner in the category of regulated water supply with transmission losses. The rival parties had given their own versions of the amounts due from the petitioner under the said category, depending upon the extent of water being utilized as raw material.

115. In the charts submitted by the rival parties, we find that there is no dispute about the figures, depending upon the extent to which water is treated as raw material. While the petitioner is pressing for treating only 2% of water being utilized as raw material in the manufacturing unit, the respondents are insisting upon the figure arrived at by treating 80% of the water utilized as raw material, in terms of the order passed by respondent no. 3 – PDRO.

116. Much was said about the NEERI report. The petitioner contends that even as per the NEERI report, utilization of the water to the extent of 7%, is treated as raw material and remaining is for

different processes. The respondents have relied upon the observations made in the order dated 01.10.2012 passed by a Division Bench of this Court at the Principal Seat in the case of ***United Breweries Ltd. Vs. State of Maharashtra and others*** (Order dated 01.10.2012 passed writ petition no. 2683 of 2012). In the said order, the Division Bench of this Court referred to the afore-mentioned report of NEERI and found that 65% of the total intake of water in the liquor industry could be treated as raw material.

117. We are of the opinion that while the exercise to be carried out by respondents no. 4 and 5 would reveal the actual utilization of water as raw material in the manufacturing unit of the petitioner, the amount that the petitioner needs to deposit with the said respondents while the said exercise is being carried out, can be based on the said order passed by Division Bench of this Court in the case of ***United Breweries Ltd.*** (supra). This would necessarily be subject to the findings in the exercise to be carried out by respondent nos. 4 and 5 and being adjusted towards final amount due. There is no dispute between the parties about the fact that when the petitioner is included in the category of regulated water supply and 65% of the water is treated as having been used as raw material, the amount due comes to Rs.77,33,35,856.29, without penalty, late fees etc.

118. We are of the opinion that since the petitioner, till date has deposited only Rs.10.50 Crore during the pendency of the litigation, by rounding of the figure at Rs.77 Crores, a direction can be issued to the petitioner to deposit the balance amount of Rs.66.50 Crore with respondent no. 5 – Sub Divisional Engineer.

119. In view of the above, the writ petition is disposed of as follows :

ORDER

I) The impugned orders dated 27.04.2021 passed by respondent no. 3 – PDRO and impugned order dated 25.07.2022 passed by respondent no. 2 – appellate authority, are quashed and set aside.

II) The impugned demand notices dated 14.12.2018, 31.12.2018, 10.01.2019 and 19.08.2022, are quashed and set aside.

III) The notice dated 26.09.2022 issued by respondent no. 5 on the basis of operative portion at paragraph no. 36(vi) of the impugned order of respondent no. 2 – appellate authority dated 25.07.2022, is held unsustainable, in the light of the impugned order dated 25.07.2022 being quashed and set aside, consequently, the said demand notice dated 26.09.2022 is also quashed and set aside.

IV) Respondent no. 5 is directed to undertake a fresh exercise for issuing water charges bills to the petitioner for the period from November – 2018 onwards, by applying rates as prescribed by the bulk water tariff orders of 2018 and 2022 to the water lifted by the petitioner, in the light of the observations made hereinabove and then to issue appropriate fresh water charges bills for the entire period. The exercise shall be completed within a period of three (3) months from today.

V) While carrying out the fresh exercise, the respondent no. 5 shall undertake appropriate enquiry by inspecting the manufacturing unit of the petitioner and after taking into consideration the material that the petitioner may place before the said respondents. Principles of natural justice shall be followed.

VI) The petitioner is directed to deposit a further amount of Rs.66.50 Crores with respondent no. 5 within a period of six (6) weeks from today.

VII) The said amount shall be adjusted towards the fresh water charges bills that shall be issued by the respondent no. 5, upon completion of the afore-mentioned exercise. If it is found that excess amount is deposited by the petitioner, it shall be adjusted towards future water charges bills.

VIII) The petitioner as well as the respondents will scrupulously abide by the above directions within the timeline indicated therein.

IX) Pending applications, if any, also stand disposed of.

X) Rule is made absolute accordingly.

[Y.G. KHOBRAGADE]
JUDGE

[MANISH PITALE]
JUDGE

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