

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15012 OF 2023

Shelke Beverages Pvt. Ltd.,
Having its office at No.101,
Sr. No.348A-1/3-2, Suyog Fusion Apartment,
Dhole Patil Road, Pune 411 001
Through its Director,
Vishal Shelke

...Petitioner

Versus

1. Deleted (As per order dated 09/09/2024)

2. Primary Dispute Resolution Officer &
Chief Engineer, Irrigation Department, Pune
Having office at Sinchan Bhavan,
Mangalwar Peth, Barne Road,
Pune 411 001

3. Executive Engineer
Chaskaman Irrigation Department
Pune

4. Superintendent Engineer
Pune Irrigation Division,
Pune

5. Akshay Deepak Gaikwad
Age: Adult, Occ: Business
At Post Kondhapuri, Taluka Shirur,
District – Pune

...Respondents

*Mr. G. S. Godbole, Senior Advocate a/w Ms. Shruti Tulpule for the
Petitioner*

Respondent No.1 - Deleted As per order dated 09/09/2024

Mr. Nitin Gaware Patil for the Respondent Nos. 2 to 4

CORAM : SHARMILA U. DESHMUKH, J.
RESERVED ON : MAY 6, 2026
PRONOUNCED ON : JUNE 8, 2026

JUDGMENT :

- 1. Rule.** With consent, Rule made returnable forthwith and taken up for final hearing. Mr. Nitin Gaware Patil waives notice on behalf of the Respondent Nos. 2 to 4.
- 2.** By this petition filed under Article 227 of the Constitution of India, the challenge is to the order dated 25th March 2022 passed by the Primary Dispute Resolution Officer (for short, "**PDRO**") assessing the Petitioner's liability for payment of Rs.1,41,56,191/- towards bulk water tariff for industrial use comprising of Rs.24,40,722/- towards penalty; and Rs.19,52,578/- towards water charges for utilizing raw water from privately owned wells from the year 2011-2012 to 2018-2019 in respect of the Petitioner Company's bottling plant. The Petition also challenges the order dated 29th December, 2022 of the Appellate Authority directing the Petitioner to file affidavit clarifying certain issues and the final order of the Appellate Authority dated 30th June, 2023 upholding the order of the PDRO and issuing certain additional directions.
- 3.** In so far as the order dated 29th December, 2022 is concerned, the impugned order dated 30th June, 2023 records that the Petitioner

had challenged the order of 29th December, 2022 vide Writ Petition (st) No 4521/2023 in this Court which was disposed of by this Court permitting the Petitioner to file the affidavit within period of three weeks and accordingly Affidavit was filed by the Petitioner. The order of 29th December, 2022 having being complied with is beyond consideration in these proceedings. That leaves the order of PDRO dated 25th March, 2022 and the order of Appellate Authority dated 30th June, 2023 for consideration.

4. The facts of the case as borne out from the Petition are that the Petitioner is running a bottling factory on land bearing Gat No. 86 and draws water for its bottling plant from the wells situated on Gat No. 86, Gat No.116 in Village Kondhapuri and Gat No.361 in Village Khandale. Pursuant to a complaint filed by Respondent No. 5 alleging that the Petitioner is drawing water from Kondhapuri Minor Irrigation Tank for production of mineral water, the PDRO conducted the hearing resulting in the impugned order dated 25th March 2022, which was carried in appeal under Section 22 of the Maharashtra Water Resources Regulatory Authority Act, 2005 (for short, **"MWRRA Act"**), which upheld the order of PDRO and issued additional directions. Hence, the present petition came to be filed.

5. Mr. Godbole, learned Senior Advocate appearing for the Petitioner, submits that the Petitioner is using water from privately

owned wells in Kondhapuri for its bottling plant, which wells are located near Kondhapuri Minor Irrigation Dam, in the command area of Chaskaman (Major) Project. He submits that between 2012 to 2018, the rates for levy of water charges are prescribed by Government Resolution (**'G.R.'**) dated 9th May 2003, which will not apply to the borewell in Gat No. 86, which is not situated within 35 metres from a notified/unnotified *nala*. He submits that for the first time in the bulk water tariff order dated 11th January 2018, there is a reference to wells in Condition No.4.2 of Annexure-3, and therefore the same will apply from the year 2018 and will not have any retrospective application.

6. He submits that as there are only two wells which are situated within 35 metres of either side of nearest edge of the canal, the computation is required to be done only in respect of these two wells. He would submit that on 9th May 2003, the G.R. regarding water tariff for use of water from a well near an irrigation canal for non-agricultural use was issued. He submits that as per the said G.R., where the wells are situated within the benefitted area and within a distance of 35 metres, that the water is to be charged at half the rate. He submits that the G.R. dated 31st July 2006 is not applicable to wells and the bulk water tariff order dated 30th May 2011 did not apply to sub-surface water, and for the first time the reference to wells is found in the bulk water tariff order of 2018. He submits that the PDRO has not

considered that the well situated in Gat No. 86 is outside 35 metres. He submits that the PDRO has imposed penalty of 25% when there is no power in PDRO to impose penalty.

7. He submits that the Appellate Authority has gone beyond the scope of Appeal and has issued various directions as regards obtaining permission from Water Resources Department, entering into agreement with Chaskaman Irrigation Division, compliance with NOC of Central Ground Water Authority etc. He submits that Appellate Authority has erred in holding that Petitioner did not have consent to operate and CGWA permission to extract groundwater from July 2011 to June 2022, whereas the consent to operate was obtained from the Maharashtra Pollution Control Board on 4th December 2010.

8. He submits that the Appellate Authority has held that the Petitioner is a bulk water user entity without noticing that the bulk water tariff order dated 30th May 2011 is completely silent about sub-surface water, i.e. water in wells. He submits that the Authorities have equated the water drawn from the wells with regulated water supply with transmission losses, whereas there is no regulated water supply in the present case.

9. *Per contra*, Mr. Gaware Patil, learned counsel appearing for the Respondent Nos. 2 to 4, submits that the Petition is not maintainable as MWRR Authority is a separate entity which has been deleted from

the array of parties by the Respondents, though it is a necessary party. He submits that the MWRR Authority is not simply an Adjudicating Authority, but an Authority which is required to defend its own orders. He has further drawn the attention of this Court to Section 11 of the Act, which speaks of the powers, functions and duties of the Authority to establish a water tariff system and to fix a criteria for water charges, and would submit that the MWRR Authority is, therefore, a necessary party.

10. He tenders a map of Chaskaman Project to contend that the Nimgaon Mahalungi Minor Irrigation Scheme is situated at a distance of about 25 kilometres from Shirur Taluka in Pune District, which comprises an earthen dam having a length of about 313.94 metres with a gross storage capacity of 3.37 MCM. He submits that the Irrigable Command Area of the scheme is 5.2 km and the scheme is further equipped with a left bank canal of 6 km and a right bank canal of 2 km. He submits that the left canal of the Chaskaman Dam, also has an escape at chainage No.92/715 which releases water into the Nimgaon Mahalungi Minor Irrigation Tank. He submits that the Petitioner company has dug borewells in the benefitted zone of the Chaskaman Dam, and as they fall within the command area, Section 56 of the Maharashtra Irrigation Act applies.

11. He submits that the Appellate Authority has noted the report of the Joint Committee, which had visited the site in question and submitted that all the wells/borewells fall under the command area of Chaskaman Project, which is admitted in the appeal memo and the report is not disputed. He points out that the appeal memo admits that the privately owned wells are situated in the command area and that the dispute is that the wells do not benefit from the irrigation project, and it is evidenced from the map that there is benefit to the privately owned wells from Kondhapuri Minor Irrigation Tank. He would submit that under Section 56 of the Maharashtra Irrigation Act, they have to be charged at 50% as they are benefitted from percolation. He submits that under the G.R. of 2003, the wells situated within the command area of Chaskaman Project, as well as the wells which are situated within 35 metres of the canal, which uses the water for the non-agricultural purposes, are required to be charged at half the industrial rate. He submits that the said Government Circular is in two parts and the Petitioner falls within the first part of the wells situated within the command area. He submits that in respect of such wells, the G.R. dated 9th May 2003 provides for permission to be issued for the purpose of use of water, which requires an agreement to be executed with the Authority.

12. He would submit that under the bulk water tariff order dated 30th May 2011, Serial No. 2 of Clause No. 4.1.1, as regards regulated water supply with transmission losses, applies to the Petitioner. He submits that as the source of supply is a minor irrigation tank, which receives water from the canals and rivers and there is percolation, the bulk water tariff order which speaks of regulated river reach below the dam with back-up reservoir would apply. He would further point out that under Section 2(3) of the Maharashtra Irrigation Act, the definition of “canal” includes a reservoir.

13. He would submit that the object of the MWRRA Act is to regulate water resources and to fix the rate for use of water for agricultural, industrial and other purposes. He has taken this Court through the definitions of “bulk water entitlement”, “entitlement” and “individual water entitlement” and would submit that the bulk water tariff order of 2011 applies to the Petitioner as it speaks of bulk water entitlement. He submits that the authorities have rightly fixed the liability of the Petitioner by taking into consideration the G.R. of 9th May, 2003 and the bulk water tariff order of the year 2011, 2018 and 2022 as the Petitioner had commenced production from July, 2012. In support, he relies upon the following decisions:

(i) Motilal s/o Khamdeo Rokde & Ors. vs. Balkrushna Baliram Lokhande (Since deceased through L.Rs.)¹

(ii) Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar & Anr.²

(iii) Nandi Infrastructure Corridor Enterprises Ltd. & Anr. vs. B. Gurappa Naidu & Ors.³

14. Rival contentions now fall for determination.

15. The core issue arising for determination is the applicable relevant government circular and the bulk water tariff order for levying of non irrigation water usage from privately owned wells for Petitioner's bottling plant. The Petitioner draws water for its bottling plant from the private wells situated on Gat No. 86, Gat No. 116 of Village Kondhapuri and Gat No. 361 of Village Khandale.

16. The determination of the issue involved will require a consideration of the relevant statutory enactments. The stated object of Maharashtra Irrigation Act, 1976 (for short "Irrigation Act") is to unify the law relating to irrigation in State of Maharashtra and to provide for charging water rates on lands under the irrigable command of canals. Section 2(3) defines "canals" and includes reservoirs which are constructed, maintained or controlled by the Appropriate Authority for the supply or storage of water.

¹ LPA Nos.177/2012 & 288/2011 dated 21/11/2019

² 1962 SCC OnLine SC 130 : 1963 Supp (1) SCR 676

³ 2026 SCC OnLine SC 745

17. Section 56(1) of Irrigation Act reads as under:

“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.”

18. The provisions of Section 56 imposes levy where percolation water is used for non irrigation purpose from : (a) any natural stream or artificial drain at the rate which would be charged if supply was made from canal and (b) a well situated on either side of a canal, within a distance of 35 meters from the nearest boundary of canal at the rate not exceeding one half of such rate as may be determined by the Appropriate Authority. Accordingly the Water Resource Department vide Government Circular dated 9th May, 2003 prescribed yearly water rates for industrial and domestic use, which rates came to be revised by subsequent Government Circular dated 31st July, 2006.

19. MWRRA Act came into force with effect from 8th June, 2005 for establishment of Maharashtra Water Resources Regularity Authority to regulate the water resources within State of Maharashtra, for allocation and utilisation of water resources, fixing the rates for use of water for agriculture, industrial, drinking and other purposes.

20. Section 2(i) of MWRRA Act defines “Entitlement” to mean any authorisation by any River Basin Agency to use the water for purposes of the Act. Section 2(e) defines Bulk Water Entitlement to mean the volumetric entitlement to a share of surface water resources produced by a project, river system or storage facility for a specific category or categories of use and deliverable within the period prescribed in the order granting the Entitlement. Section 2(u) defines “River Basin Agencies” to mean any of the River Basin Development Corporations operating in the River Basin. Section 2(z) defines Sub Surface entitlement as under:

“2(z): Sub-Surface entitlement” means an Individual or Bulk Water Entitlement to a volumetric quantity of water to be extracted in the command area of the irrigation project from a tube well, bore well or other well or by any other means of extraction of sub-surface water, or a group or field or wells duly and legally permitted, registered and constructed in accordance with the standards prescribed by the Authority.”

21. Section 11 of MWRRA Act sets out the powers, functions and duties of the Authority including the power to determine the criteria for the distribution of Entitlements by the River Basin Agencies within each category of use, establish water tariff system and to fix the criteria for water charges at sub-basin, river basin and State level. Section 14 provides that from the commencement of the Act, no

person shall use any water from any water source without obtaining the Entitlement from the respective River Basin Agencies.

22. The statutory scheme of MWRRA Act proscribes the use of water from any water source without obtaining authorisation from the concerned River Basin Agency, which in this case is stated to be the Maharashtra Krishna Valley Development Corporation.

23. The conspectus of the above stated statutory provisions relevant for our purpose is that there cannot be use of water from any water source without obtaining necessary authorisation from the concerned River Basin Agency and the use of percolation water for non irrigation purpose is liable to payment of water rate in case of usage of water from a well at a rate not exceeding one half of such rate as determined. The G.R of 9th May, 2003 determines the water rate for use of water from wells as provided under Section 56 of Irrigation Act.

24. The impugned order records that the Petitioner's Affidavit states that it had applied for no objection of central ground water authority on 15th March, 2022 for extraction of ground water, which has been granted for period 23rd June, 2022 to 22nd June, 2025. There is thus no authorisation obtained from the concerned River Basin Agency i.e Maharashtra Krishna Valley Corporation as mandated under Section 14 of MWRRA Act. In the Appeal Memo filed before the Appellate Authority, the Petitioner has admitted that the privately owned wells

are situated in the command area of Chaskaman Irrigation Project, however has denied that any benefit is received from the Kondapuri Minor Irrigation Tank. Considering the admission of the location of the wells, authorisation was required to be obtained for extraction of sub-surface water in the command area of the irrigation project. Section 11 of MWRRA Act confers the power on the Authority to enforce the decisions or orders issued under this Act and provides for penal consequences for non compliance of orders passed under the Act.

25. The PDRO has considered the G.R. of 9th May, 2003 to hold that the wells of the Petitioner falls within the benefited zone of Chaskaman Project. It considered the recycled water at 20% and assessed the liability and also imposed penalty of 25% on the assessed liability.

26. The Appellate Authority took into consideration the provisions of Irrigation Act, MWRRA Act and the Maharashtra Water Resources Regulatory Authority (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Guidelines, 2019 and held:

- (a) the Petitioner to be Bulk Water User Entity
- (b) non compliance with the conditions of Consent to Operate issued by Maharashtra Pollution Control Board
- (c) No permission for non agricultural user

- (d) applied 2.50% of applicable rate as penalty as per Bulk Water Tariff Order dated 11th January, 2018 and 1st July, 2022.
- (e) applied the yearly rates prescribed by G.R's dated 9th May, 2003, revised on 31st July, 2006, Bulk Water Tariff Orders dated 30th May, 2011, 11th January, 2018 and 29th March, 2022.

27. The Appellate Authority issued further directions to obtain permission from the officers of Water Resources Department, to enter into agreement with Chaskaman Irrigation Division, to comply with the conditions of NOC granted by central ground water authority. It also directed the Irrigation Department to revise the bills and levy water charges as per the order from July, 2011.

APPLICABILITY OF BULK WATER TARIFF ORDER:

28. The MWRR Authority in exercise of powers under Section 11(d) of MWRR Act fixed the criteria, valid for three irrigation years, 2010-2011, 2011-2012 and 2012-2013 for determination of bulk water tariff in the State. It fixed the volumetric rates for bulk water tariff for industrial use in Clause 4.1 as under:

Sl. 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>	64	320

	Regulated river portion below dam/canal lift / K.T. weir with back up reservoir / tail race from reservoir		
3.	Partly Assured Water Supply Minor reservoir with canal / K.T. weir without back up reservoir / unregulated rivers without even any K.T. weir or in unregulated river portion flowing within a command area where there is no bandhara or K.T. weir	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

29. Mr. Gaware-Patil would contend that the Petitioner's usage falls in Serial No 2 of the table dealing with Regulated Water Supply with Transmission Loss. The Maharashtra Water Resources Regulatory Authority (Fixing Criteria for and issuance of Tariff orders for Bulk Water) Regulation, 2013 defines "Bulk Water" as under:

"Bulk Water" means any water supplied by flow or lift to Agricultural/Domestic/Industrial Users from reservoirs/canal systems in the State constructed and operated by the Water Resources Department (WRD) or Irrigation Development Corporation (IDC) or made available to these users by WRD/IDC by flow or lift from regulated rivers and their tributaries flowing into the State or from natural bodies or lakes. It also includes

supplies drawn by water utilities/entities/ for its/their own use from dams/storages constructed and operated by them or obtained for its/their own use by flow or lift from natural bodies or lakes through structures constructed and operated by them.”

30. The above definition indicates a supply by flow or lift from reservoirs constructed by the authorities or made available by the authorities by flow or lift from regulated rivers and their tributaries./ natural bodies/lakes and also includes supplies drawn from dams/storages or obtained by flow or lift from natural bodies or lakes through structures constructed and operated by water utilities and entities. When the definition is read alongwith the source of supply of Bulk Water Tariff Order, in my view, the said source of supply at Serial No 2 would apply where there is water supply from a regulated river stretch, tailrace, or K.T. weir with back-up storage and not from sub surface water.

31. The interpretation would find support from the fact that in the Bulk Water Tariff Order of 11th January, 2018, there is specific imposition of levy on use of sub surface water at 50% of applicable rates at Serial No 2 of Table 1 of Annexure 3 of Bulk Water Tariff Order of 11th January, 2018, which also makes similar reference to Regulated Water Supply with conveyance loss as that of 30th May, 2011. If the Petitioner’s source of supply falls under Serial No.2 the table in Clause

No.4.1.1. of Bulk Water Tariff Order dated 30th May, 2011, there was no necessity for the subsequent Bulk Water Tariff Order of 11th January, 2018 to introduce a specific levy for sub surface water.

32. As the Bulk Water Tariff of 2011 did not impose any levy on drawing of sub surface water, the applicable provision would be Section 56 of Irrigation Act read with the G.R of 9th May, 2003 for the period from 2011 to 2018 and for the period subsequent to the year 2018, the Bulk Water Tariff of 11th January, 2018 would apply. The G.R of 31st July, 2006 increased the water use rates for industrial use as per the Annexures therein which does not deal with sub surface water.

33. The Government Circular dated 9th May 2003 provides for levy of water charges used for industrial purposes from the area of canals. Clause 1 of the said GR dated 9th May 2003 provides that the standard rate for industrial water use from wells within the command area of the canal and wells within 35 metres of the boundary of the canal will be 50% of the applicable rates for industrial use. This G.R. is sought to be interpreted by Mr. Gaware-Patil by contending that the said clause consists of two distinct parts and the former part speaks of wells which are situated within the command area of the irrigation project and the second part speaks about the location of wells which are within 35 metres of the canal and rate of 50% would apply to the latter part. The preface to the G.R. makes a reference to Sections 55 and 56 of the

Maharashtra Irrigation Act, 1976. The provisions of Section 56 of the Maharashtra Irrigation Act, which speaks of percolation and leakage rates, makes it clear that the water used from a well situated on either side of canal within the distance of 35 metres from the nearest boundary of the canal, shall be charged water rates not exceeding one-half of such rate. The preface makes it clear that the use of such percolated water was negligible, however, now the Government has decided to charge the water rates in respect of such percolated water and accordingly the G.R. was issued. The G.R., which is only in respect of imposition of water charges, has to be read in consonance with Section 56, which speaks of charging water rates only in respect of such wells which are situated within the distance of 35 metres from the nearest boundary of the canal. When the wells are situated within the command area, there is no question of any percolation or leakage charges being applied as the land itself is benefitted, and the provisions of Section 56 presume that such benefit of percolation will be available to wells which are situated on either side of a canal but have capped the same at a distance of 35 metres from the nearest boundary of the canal. The G.R. dated 9th May 2003 has to be read accordingly and not in the manner as sought to be read by Mr. Gaware Patil. Even if the wells are situated within the command area of the Chaskaman Irrigation Project, unless there is a finding that the wells

are within the cap of 35 metres, the G.R. dated 9th May 2003 will not apply. As recorded in the order of the Appellate Authority, the Petitioner has admitted that two wells are situated within 35 metres and one borewell is not situated within 35 metres, and therefore the G.R. dated 9th May 2003 will not be applicable to one borewell which is situated beyond 35 metres from the canal.

34. The levy of water charges by the PDRO for the period 2011-2012 to 2018-2019 is on the ground that the Petitioner is in the command area of the Chaskaman Project and that the Government Circular dated 9th May 2003 applies. The PDRO has taken into consideration that all the wells are situated within the command area of Chaskaman Project and, since the use is from the year 2011, the G.R. dated 9th May 2003 applies. The PDRO has further imposed a penalty of 25% on the water charges. Perusal of the order of the PDRO does not indicate any submission being raised by the Petitioner that one of the borewells is beyond the distance of 35 metres, which contention was taken before the Appellate Authority. The Appellate Authority has noted the report of the Joint Committee that all the wells fall under the command area of Chaskaman Project. However, as discussed above, unless the well/borewell also falls within the distance of 35 metres, the G.R. dated 9th May 2003 will not apply. Even if the report of the Joint Committee is not disputed, there is nothing brought on record to dispute the

Petitioner's contention that one borewell situated in Gat No.86 is beyond 35 metres.

35. The Appellate Authority has held that the Petitioner is a bulk water user entity. The impugned order of the Appellate Authority makes a reference to the Maharashtra Water Resources Regulatory Authority (Fixing Criteria for an Issuance of Tariff Order for Bulk Water) Guidelines, 2019, and sets out the definitions of "bulk water", "bulk water supply entity", "bulk water tariff system" and "bulk water user entity". Perusal of the definition of "bulk water" indicates that the same means any water supplied from surface water resources produced by a project, river system or storage facility. However, the PDRO has relied upon Section 56 of the Maharashtra Irrigation Act, which speaks of levy of water charges in respect of percolation water received from any canal and, therefore, the reference is to the sub-surface water and not the surface water. The Appellate Authority could not have construed the Petitioner as bulk water user entity considering the definition of "bulk water" under the Guidelines of 2019.

36. The Appellate Authority has noted the G.R. dated 9th May 2003 and that the industrial rates are prescribed in the appendixes of the G.R. It further takes into consideration the G.R. dated 1st July 2006 revising the water rates as well as the bulk water tariffs fixed by the Authority under the MWRRA Act. It applies the bulk water tariff orders

of 2011 and 2018, as the Petitioner company started its production from July 2011, and has applied the bulk water tariff orders issued from time to time. The bulk water tariff order dated 30th May 2011 does not make any reference to the sub-surface water, which was introduced for the first time in the bulk water tariff order of 2018. Annexure 3, Clause 4.2 thereof provides that the rates will be 50% of the applicable rates at Serial No. 2 of Table No. 1 of Annexure 3, which is a category of regulated water supply with conveyance loss and defines the water supply type and source as water used from regulated river reach below dam, canal/ K.T. weirs with back-up reservoir. The said water supply type and source would not apply in the present case where the water source is from sub surface and the reference to Serial No. 2 is only for the purpose of computation of the rates which are required to be applied. If the bulk water tariff order of 2011 did not apply to the sub-surface water, then it is the G.R. dated 9th May 2003 which would apply for the period from 2003 to 2018. The Appellate Authority has considered the provisions of Section 56 and the G.R. dated 9th May 2003, however, has thereafter erred in applying the bulk water tariff of the year 2011 for the purpose of levying the water charges.

37. The Appellate Authority further considered paragraph 7 of the G.R. dated 9th May 2003. Perusal of paragraph 7 would indicate that in

respect of the categories of the wells which are noted in the said G.R., levy of water charges is after issuing permissions to such wells and an agreement is required to be entered into. In view thereof, directions have been issued by the Appellate Authority that the Petitioner should obtain permission for extracting groundwater for industrial purpose and enter into an agreement with Respondent No. 2, i.e. Chaskaman Irrigation Division.

38. Under Section 22 of the MWRRA Act, a person aggrieved by an order of the PDRO is entitled to prefer an appeal to the Authority. The Authority is the Maharashtra Water Resources Regulatory Authority established under Section 3, and the powers, functions and duties of the Authority are set out in Section 11 of the Act, which include the power to enforce the decision and orders issued under the Act, amongst other things, including such other powers, functions and duties as may be prescribed. The PDRO, whose order was under challenge before the Appellate Authority, exercises powers of adjudication and assessment under the statutory framework governing levy and recovery of water charges. The scope of the appellate jurisdiction exercised by the Authority under Section 22 of the MWRRA Act was, therefore, confined to examining the legality and correctness of the order passed by the PDRO, and did not extend to issuing independent directions while exercising appellate powers. While

acting as an Appellate Authority, the Authority was deciding the appeal against the PDRO and was not discharging the functions under Section 11 of the Act. The directions which have been given by the Authority as regards obtaining permission from and entering into an agreement with Respondent No. 2, and abiding by the conditions as specified in the NOC of the Central Ground Water Authority, are beyond the scope of powers of the Appellate Authority. It is however open for the Authority to independently issue such directions to the Petitioner in exercise of powers under Section 11 of MWRRA Act.

39. The Appellate Authority has held that the Petitioner's water use from wells in the command area of Chaskaman Project falls under the category of regulated water supply with conveyance loss as set out in the bulk water tariff order dated 11th January 2018, whereas the said category was required to be applied only for the purpose of calculation of the rates, which was 50% of the applicable rate.

40. In so far as imposition of penalty is concerned, in view of Section 14 of MWRRA Act, the Appellate Authority has rightly applied the penal provisions of Bulk Water Tariff Order of 11th January, 2018 and 29th March, 2022.

41. Insofar the contention that the MWRRA Authority was a necessary party and could not have been deleted is concerned, the Authority was impleaded in the capacity of Appellate Authority which

had passed the impugned order. One of the issues which was considered by the Hon'ble Full Bench in the case of ***Motilal s/o Khamdeo Rokde & Ors.*** (supra), was whether a petition under Article 227 of Constitution of India challenging the order passed by judicial/civil court subordinate to High Court needs to be dismissed as not maintainable in absence of such Court/Presiding Officer being impleaded as party Respondent. The Hon'ble Full Bench noted various judicial pronouncements on the subject which had held that there are many Tribunals which only adjudicate and have nothing to do with the *lis*, and that there are certain authorities which in law are entitled to defend the orders passed by them and they are necessary parties, and when the Tribunal or Authority is required to defend its own order, it is to be made a party, failing which, the proceedings before the High Court would be regarded as not maintainable.

42. The test to be applied is whether the Authority is required to defend the order impugned in the present proceedings. The impugned order dated 30th June, 2023 has been passed in exercise of appellate powers under Section 22(3) of MWRRA Act. The Authority is constituted under the MWRRA Act to exercise both original and appellate powers. It operates as an original forum when it exercises powers under Section 11 of MWRRA Act and functions as an appellate forum under Section 22(3) and tests the validity of the order passed by the PDRO. The PDRO

adjudicated the dispute under Section 22(1) of MWRRA Act in the context of levying of water charges for the use of percolation water. As the subject matter of *lis* under Section 22(3) of MWRRA is the order of PDRO and not the original decision/order of the Authority, it is not a decision or order of the Authority and it is not necessary for the Authority to step in and defend its own order.

43. Before the PDRO, there was no issue raised as regards the absence of authorisation for extraction of sub surface water before the PDRO. While adjudicating the validity of the order of PDRO, the Authority was exercising appellate powers and could not have issued directions which would fall within the purview of Section 11 of MWRRA Act. It is open for the Authority to independently pass directions to the Petitioner to comply with the provisions of the enactment and obtain necessary authorisation from the concerned River Basin Agency.

44. In light of the above discussion, the following are the findings:

- (a) The government circular dated 9th May, 2003 applies only to the wells which are situated within the command area of the Chaskaman Irrigation Project within the capped distance of 35 metres. The Petitioner has admitted that two wells are situated within 35 metres and one borewell is not situated within 35 metres, and therefore the G.R.

dated 9th May 2003 will not be applicable to one borewell which is situated beyond 35 metres from the canal.

- (b) The bulk water tariff order of 2011 does not apply to the sub-surface water and the charges for use of sub surface water was introduced in the bulk water tariff order of 2018, which would apply from the year 2018 and not retrospectively.
- (c) For the period from July, 2011 till the year 2018, the water charges is leviable as per the G.R. dated 9th May 2003 at half water rate for industrial use. For the period subsequent to January, 2018, the water charges would be leviable as per the Bulk Water Tariff Orders.
- (d) The penalty is to be imposed for using water without agreement as per the Bulk Water Tariff Orders of 11th January, 2018 and 29th March, 2022.
- (e) The directions issued in paragraph 31.0(i), (ii),(vi) and (vii) of the impugned order dated 30th June, 2023 could not have been issued in exercise of appellate powers. It is open for the Authority to issue necessary directions and orders to the Petitioner independently in exercise of powers conferred by MWRRA Act.
- (f) The categorising of the Petitioner's water source as

“Regulated Water Supply with Conveyances Losses” in paragraph 31.0(iv) of the impugned order dated 30th June, 2023 is set aside.

- (g) The direction to issue revised bills and levy of water charges from July, 2011 as per the Authority’s order as directed in paragraph 31.0(v) of the impugned order dated 30th June, 2023 stands modified. The revised bills and water charges to be levied from July, 2011 as per the observations in this order.

45. In view of the findings recorded above, the impugned orders dated 25th March, 2022 and 30th June, 2023 are hereby quashed and set aside. For the purpose of computation of the water charges, the matter is remanded to the PDRO to compute the same in accordance with the observations and findings contained in the present order.

46. Rule is made absolute in the above terms. Petition stands disposed of accordingly.

[SHARMILA U. DESHMUKH, J.]