

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7780 OF 2011
[Arising out of SLP (C) No. 7443 of 2010]

PepsiCo India Holding Pvt. Ltd. Appellant

Versus

State of Maharashtra & Ors. Respondents

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. The appeal is directed against the judgment and order dated 04.11.2009 passed by the High Court of Judicature at Bombay in Writ Petition No. 5834 of 2005. The said Writ Petition was filed by the appellant herein questioning the levy of increased water charges on ground that it cannot be given retrospective effect by the respondent herein.

3. The facts leading to the filing of the present appeal are that the appellant - PepsiCo India Holdings Pvt. Ltd. is incorporated in India under the Companies Act, 1956 for manufacturing and distributing carbonated soft drinks, bottled drinking water and other food products. Appellant stated that it is one of the leading manufacturers of

Carbonated Soft Drinks and bottled drinking water in the entire State of Maharashtra and a significant portion of the entire national demand for the appellant's product is met from the production made within the State of Maharashtra itself.

4. The State of Maharashtra, represented by Secretary,

Deptt. of Industries, Mantralaya is respondent no. 1, the Maharashtra Industrial Development Corporation ["MIDC"] is respondent no. 2 which is responsible for infrastructure required for any industry, i.e. land, water and electricity. All the Industrial Estates of State Government in Maharashtra come under the purview of respondent no. 2. MIDC at Roha Div. Alibag is respondent no. 3 and is the branch of respondent no. 2 and shares the same objective. Department of Irrigation is respondent no. 4 and is responsible for the supply of water to all industrial estates under respondent no. 2 in Maharashtra.

5. The appellant stated that respondent no. 2, acting through respondent no. 3 invited business undertakings to set up industrial units in the industrial areas to add impetus to industrial development in the State of Maharashtra.

Accordingly, the appellant decided to set up its manufacturing plant in the State of Maharashtra at Paithan, Distt. Aurangabad and Roha, Dist. Raigad. In this case, however, we are concerned

with the manufacturing plant of the appellant located at Roha.
6. The primary business of the appellant is to manufacture non-alcoholic beverages in its plant and for the manufacturing of the same, water is used as one of the raw materials.

7. The plant from where the appellant operates its unit at Roha, Maharashtra was earlier owned by another company by the name Voltas India Limited. The said company had entered into a Water Supply Agreement with respondent no. 3 for its facilities at Dhatav, Roha under the Water Supply Regulation Act, 1973.

8. There are regulations in respect of supply of water, namely, 'Maharashtra Industrial Development Corporation Water Supply Regulations'. Regulation 2(2) defines "Consumer", which means any person or persons who has applied for supply of water from any works of the Corporation and to whom MIDC has agreed to

supply water or any person or persons otherwise liable for payment of water charges to the Corporation. Clause 27 of the

Water Supply Agreement provides that the Respondents shall fix charges for water from time to time and increase or decrease the water charges in its discretion after giving notice of one month to the consumer. Clause 36 of the Water Supply Agreement

provides for penalty in case of failure on part of the consumer to pay the water bill. Clause 27 of the Water Supply Regulations, 1973 are as under:

"Clause 27: Water Rate: The charges for water shall be fixed by the Corporation from time to time. The Corporation shall increase or decrease the water charges in its discretion after giving notice of one month to the consumer. The rates of water charges so fixed or altered shall be conclusive and be binding on the consumers."

Regulation 28 provides for recovery of arrears on account of water charges or any other expenses incurred by the Corporation in connection with water supply to the consumer, which shall be recoverable as arrears of land revenue. The Corporation also has the right to disconnect the water supply in the event of contingencies provided under the regulations.

Regulation 35 is in respect of Water Rate, which reads as under:

"Regulation 35: Water Rate: The consumer shall pay the charges for water supply which shall be fixed by the Corporation from time to time. The Corporation shall increase the water charges in its discretion after giving notice of one month to the consumer. The rates so fixed or altered by the Corporation shall be final and binding on the consumer."

Regulation 36 provides for recovery of arrears as land revenue.

Clause 42 of the agreement provides for a forum of Chief Engineer, MIDC, for resolution of the disputes arising out of interpretation or otherwise of the regulations and that the decision of the dispute resolution authority shall be final and binding on the consumer. Regulation 51 provides that for disputes arising out of the interpretation or otherwise of the provisions of the Agreement, the decision of the Chief Engineer, MIDC shall be final and binding on the consumer.

9. Appellant purchased its plant at 100/1, A-Road, MIDC, Dhatav, Roha, Distt. Raigad from Voltas Limited, the original owners of the property. Voltas issued its no objection to transfer water connection in the name of the appellant. Since

then, the respondent no. 3 has been issuing all the water bills in the name of the appellant.

10. Respondent no. 4 while acting upon a recommendation of the Finance Commission issued Government Resolution No. WSR 1001/(5/2001)/IM (P) dated September 12, 2001 increasing the water cess. The revision was made after drawing a classification differentiating three categories of consumers of water, namely:-

"Category 1 - Water used for purpose of drinking - present rates of water cess doubled.

Category 2 - Water for industrial use - present rates of water increased three times.

Category 3 - Industries where water is being used as a raw material as drinking water, for such industries (that is, cold drinks, mineral water etc.) - present rates of water increase ten times".

For category 3 this is what was provided:-

XXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX

A5 "Drinking water industries where water is being used as raw material means cold drinks, breweries, mineral water and similarly based industries."

Above increase in rates was made effective from 1st September, 2001 as per clause A4.

11. The old rate of water was Rs. 3.65 per cubic meter which was increased to Rs. 36.50 pcm from September 1, 2001 for industries where water is being used as a raw material as drinking water. It was also specified that the revised rates would increase by 15% in the month of July of every following year.

12. Consequently, the appellant was placed in the third category i.e. industry using water as raw material. On that

basis, the appellant was directed to pay water cess, on increased rates. Subsequently, some industrial associations/organisations/ industrialists made representations to the State Government requesting it not to increase the water cess.

13. On October 24, 2001 the respondent no. 4 issued another Govt. Resolution Errata No. WSR 10001/ (5/2001)/IM (P). The corrigendum changed the increased water cess from the new rates of Rs. 36.50 pcm to Rs. 40 pcm and made the same effective from September 1, 2001 with a clarification that while deciding/fixing water rates vide Government Resolution No. WSR 1001/(5/2001)/IM (P) dated September 12, 2001, some deficiencies were left out and the same are being removed by Errata dt.

24.10.2001 with the following resolution:

"A(3) In the industries where water is being used as raw material as drinking water, for such industries (i.e. Cold Drinks, Mineral Water etc.) present rates, (which have been made effective from 01/07/2000) are being made 10 times.

A (4) Above increase in rates shall be effective from 1 st September, 2001"

14. On 31.10.2001, respondent no. 2 issued a Circular No. G/30/2001 deciding to increase its water charges levied on the consumers and thereby implementing the revised rates of water charges from November 1, 2001 onwards. Relevant portion of the Circular is reproduced hereunder:

"Pursuant to the policy decision taken during 246th meeting of Board of Directors of MIDC held on 3.10.1997 and as approved by the Sub-Committee of the Corporation appointed for that purpose, the Corporation has issued revised rates of water supply from 1.4.2001 vide the Circular under reference No. 1. Thereafter the Irrigation Department of Government of Maharashtra have issued revised rates of water supply for drinking and for industrial use vide the aforesaid reference No.2. The prevailing charges for drinking water have been doubled (from 1.7.2000) and water charges for industrial use have been increased three times (from 1.7.2000). It has been mentioned that the said increase in rate is effective from the date 1st September, 2001.

Due to this increase in water charges, the amount to be paid by the Corporation to the Irrigation Department would be increased and therefore, it is inevitable for the Corporation to increase its water charges. Pursuant thereto the Corporation

has decided to implement the revised rates of water charges from the date 1.11.2001.

Revised rates to be implemented from 1.11.2001 have been mentioned in the accompanying schedule No A-1 to A-5.

While determining the revised rate of water supply the prevailing water charges for domestic use have been increased by Rs.0.25 per c.m. while for industrial usage it has been increased by Rs. 6.50 p.c.m. and accordingly the revised rates have been made applicable to all the concerned consumers from the date 1.11.2001.

As stated above, all the Executive Engineers are requested to issue a separate circular regarding increase of water charges and to supply it immediately to all the consumers as per the accompanying form.

Water consumed by the consumers from the date 1.11.2001 should be charged at the revised rates."

15. On 06.12.2001, respondent no. 2 issued a Circular No. G-32/2001 informing the industrial organisations that the proposed increase in rates is due to the increase in water charges effected by respondent no. 4 and till the time respondent no. 4 does not withdraw the increase in water charges, the respondent no. 2 cannot reduce the water rates. It was further stated that representations received have been forwarded to the Government and therefore during the pendency of the said representations, the industrialists can pay the water bills at previous rates. On 13.08.2002, respondent no. 2 issued another Circular informing the pendency of representations before the Government, in which it was also stated that industrialists are allowed to pay the bills at the old rates and the same should be accepted and the balance amount should be shown as arrears.

16. On 28.11.2002, respondent no. 4 issued a fresh Govt. Resolution No. SANKIRN 2002/(148/2002)/IM (P), whereby the water cess for different categories was amended as follows:-

"Category 1 - Water used for purpose of drinking - present rates of water cess doubled.

Category 2 - Water for industrial use - present rates of water increased doubled.

Category 3 - Industries where water is being used as a raw material as drinking water, for such industries (that is, cold drinks, mineral water

etc.) - present rates of water increase ten times."

17. By the above amendment, the only change was made in category 2 and no change was made for the use of water by the

Industry where water is being used as a raw material.

18. On 27.05.2003, a Circular No. G/06/2003 was issued by Chief Engineer (Head Office) MIDC, Mumbai 93 stating about the water tariff increase and thereby confirming the rates set out vide Govt. Resolution dated 28.11.2002. The said Circular provided for the amended policy of water supply of industrial and residential use, which was required to take effect from June 1, 2003. On the same day respondent no. 2 issued another Circular No. G/7/2003 wherein the rate of water supply of the consumers under the industrial area using water as raw material was fixed at same as of the rates in industrial area. Relevant

portion of the Circular is reproduced hereunder:

"1. As per the Circular dated 24.10.2001 of the Irrigation Department, water rate is increased for industrial use - water rate 200 percent for residential use - water rate 100 percent for use water as raw material - water rate at 1000 percent. For recovering the increasing rate in water charges, by amending the rate of water supply of Corporation, were made applicable by Circular No. G/30 dated 31.10.2001 and the rate for use water as raw material, the rates were made applicable as per Circular No. G/17 dated 30.7.2002, with effect from 01.11.2001. The Corporation had raised the issue/representation against this price revision with the State Government. The said case/representation seeking reduction in water rate was under consideration of Government. Therefore, approval was given to accept the bills of water supply at old rate from the Industrialists under the industrial area as per Circular No. G/31 dt. 6.12.2001 and Circular No. G/18 dt. 13.8.2002 of this Office. Similarly, it was informed by Circular No. G/433 dt. 26.11.2001 not to increase rate of water supply at the placed where water charges are not payable to the Irrigation Department for industrial area.

2. Now as per the circular dated 28.11.2002 of the Irrigation Department, the water rate for industrial use has been decreased from 200 percent to 100 percent. The increase in residential use and use water as raw materials is confirmed. The amended rates are made applicable from 1.9.2001. As per circular dt. 28.11.2002, the Irrigation Department has increased 15 percent increase from 1.7.2002 and 15 percent increase from 1.7.2003.

5. The rate of water supply of the consumers under the Industrial area using water as raw material will be the same as of the rates in Industrial area. However, the rate of water of such consumers outside industrial area be charged by including difference of rates of water tax.

6. The representations seeking reductions of water charges are under the consideration of Government. Therefore, though the bills are sent to the consumers at increased rate, the concession was given to pay the same at the earlier rate (of prior to 01.11.2001). For this reason, the arrears to that extent and late charges thereon have been shown in the bills of consumers, however, the rates during the period from 01.11.2001 to 31.05.2003 and the bills may not be revised presently. The decision in that regard will be issued separately. All consumers will be bound to pay the bills of water at the rate of water supply in this circular is made applicable from 01.06.2003."

In this view of the matter, no final decision was taken for the bills relating to the period from 01.11.2001 to 31.05.2003. The Maharashtra Industrial Development Corporation an undertaking of the Maharashtra Government issued a Policy of water supply and made it effective from 1st June, 2003.

19. On 11.06.2003, the respondent no. 2 issued Circular No. G/08/2003 revising rates of water supply for the period from November 1, 2001 till May 31, 2003. It was specified that for the period November 1, 2001 to November 30, 2002, the different amount as per the revised rates should be shown as arrears in the water bills. It was mentioned that if an undertaking is given by the consumer to pay the arrears, then the arrears would not be shown. Further, for the period from December 1, 2002 to May 31, 2003, the arrears calculated as per the revised rates were to be retrospectively recovered from the consumer in three equal monthly instalments.

20. On 18.05.2005, respondent no. 2 vide its Circular No. G/01/2005 revised the rates in respect of water supply to the customers in industrial area using water as raw material. Respondent no. 2 specifically observed that Circulars dated 27.05.2003 and 11.06.2003 provided for amended policy, which implemented equal rates for all types of industries. By Circulars dated 27.05.2003 and 11.06.2003 equal rates were fixed

for the water supply to all industries including the industries using water as raw material in industrial area. Relevant part of the Circular is reproduced hereunder: -

"B. In accordance with Government Resolution dated 28.11.2002 of the Irrigation Department, the rates of using residential water use and industrial water use under the Industrial area and outside the area by Circular No. G/7/2003 and by Circular No. G-8 dated 11.6.2003, the orders are issued regarding as to how the said rates should be implemented.

C. By these circulars, equal rates are fixed for the water supply to all industries including the industries using water as raw material in industrial area. However, while implementing this policy it is found that in some industrial area, the use of water by industries which are using water as raw material, is in huge extent. Since the rates of water use as raw material, are more than five time of the water tax rate of general industrial use, the financial burden of amount of difference is falling on Corporation. With a view not to put financial burden of such type on Corporation, the decision of amending the rates of water supply of the customers using water as raw material under the Industrial area, has been taken. The rates of water supply of such customers be amended as follows: -

1) Revised rates: -

By extending the rates by Rs. 34.60 per c.m. of water supply of respective industrial area issued by issued under Circular No. G/7 dated 27/05/2003, the rates of water supply be amended from 1/11/2001.

2) Recovery of Bills of water supply: -

- i) For the period from 01/11/2001 to 30/11/2002 - The water-tax be levied at revised rates for the aforesaid period. The amount of difference drawn by amended rates of water be shown as arrears. On the amount comes due to difference in rate of water during this period, late fee may not be charged. The amount of arrears may not be shown in the monthly bill of water and for recovery of this amount, undertaking be taken from the customers on court-stamp paper of Rs. 20/-. In respect of the said arrears, separate orders will be issued as per the decision of Irrigation Department.
- ii) For the period from 01/12/2002 to 30/04/2005 - For the aforesaid period, the amount of difference of amended bill be recovered in six equal instalments. First instalment be recovered with the bill of May, 2005 and last instalment be recovered with the bill of October, 2005. On the arrears of amount of its difference, no late fees be charged till 30.11.2005.
- iii) Recovery of bills of water supply from 1/5/2005 - The recovery of further bills from 1/5/2005 be made regularly by amended rates of water supply

as above."

21. On 06.06.2005, the Deputy Engineer of respondent no. 2 issued a letter to the appellant regarding revision of water rates for the consumers within the Industrial Area using water as raw material.

By the said letter respondent no. 2 informed the appellant that respondent no. 4 had increased the rate of royalty by five times w.e.f. 01.09.2001 for consumers within the Industrial Area using water as raw material and appellant was further informed that its rate has been revised to Rs. 48.10 pcm w.e.f. 01.09.2001.

The Deputy Engineer proposed recovery of water charges in the following manner:

1) The water bills at revised rate will be paid regularly by the appellant from 01/05/2005 onwards.

Accordingly, May 2005 bill is prepared & issued at the rate of Rs. 48.10 pcm.

2) The water bills for the period 01/11/2001 to 30/11/2005 revised as per revised rate. Differential amount

given in separate page in tabular form amount to Rs. 69,97,385/-.

However, the recovery of the differential payment will be kept in abeyance till the issue of royalty

payment for this period is resolved by the Irrigation Department.

For arrears of this period appellant will have

to give an undertaking on the stamp paper of Rs. 20/- regarding payment of water charges to this office.

3) For making differential payment of water bills as per revised rates for the period from 01/12/2002 to 30/04/2005

amounting to Rs. 1,57,62,618/- appellant will be allowed six monthly equal instalment of Rs. 26,27,103/- each.

The appellant was directed to pay the instalments failing which the amount would be charged along with interest to be calculated after six months.

22. On 24.06.2005, respondent no. 3 issued another letter to the appellant reiterating the observations made by the Deputy Engineer, MIDC, and reminding the appellant about the increased water rates for consumers using water as a raw material with

effect from 01.11.2001. Through this letter appellant was directed to submit bank guarantee of Rs. 69,97,385/- towards differential amount due to revision of water rates and to pay Rs. 1,57,62,618/- being differential amount from December 1, 2002 to April 30, 2004 in six equal installments of Rs. 26,27,103/- each from May 2005 to October, 2005.

23. Thereafter, M/s. Waluj Industrial Association Paithan, Aurangabad, who was facing the similar situation as the appellant herein, filed Writ Petition No. 4263 of 2005 before the High Court of Judicature at Bombay, Aurangabad Bench, challenging the circulars and notices issued by respondents. In the said case similar agreement and the same regulation were applicable to the writ petitioner as the present appellant. Relevant part of the Judgment delivered by the High Court and having relevance to the present case is reproduced hereunder:

13. In view of the clauses referred to above, contained in Water Supply Regulations and Water Supply Agreement, conclusion can be drawn that the Corporation is within its right to revise water rates. It is a common grievance made by the petitioners, firstly that prescribing exorbitant water rates is unreasonable for which there is no basis. It is also contended that levy of water charges with retrospective effect is not permissible.

14. Respondents have placed on record Government Resolution dated 24.10.2001 whereby it has been directed by the State Government that royalty for lifting water by MIDC from the Irrigation Department shall be at the rates prescribed in the said Resolution. The aforesaid Resolution prescribed different rates in respect of use of water for normal industrial use as well as for user of water for manufacturing activity where water is used as a raw material. The Corporation issued notices to different industrial establishments in respect of revision of water rates and made demand in respect of payment of water charges at revised rates. Although petitioners have made a grievance that levy of water charges is with retrospective effect and respective industrial establishments were not informed about the revision of water charges on previous occasions, however, Respondent-Corporation has contended in its affidavit-in-reply that in fact different industrial establishments, operating within the area of Industrial Development Corporation, have been specifically informed in respect of revision of water rates and their liability to pay water

charges at revised rates.

15. During the course of hearing, learned Counsel for Respondent-Corporation has made available record in respect of communications made by petitioners in Writ Petition No. 4263/2005 i.e. Waluj Industries Association. On perusal of an application tendered by Waluj Industries Association on 23.11.2001, it appears that said communication is in response to a Circular dated 05.11.2001 relating to revision of water rates issued by MIDC. It is urged in the application that the whole industry is passing through a phase of recession and cannot bear the hectic increase. The Association has protested against the hike in water charges and requested the Corporation to take up the issue with Irrigation Ministry. A further application appears to have been tendered by the Chamber of Marathwada Industries and Agriculture on 16th August 2003 in respect of revision of water rates and communications made by the Corporation in that behalf to respective industrial units. Similar communications find place in the record dated 14th July 2003 by Industries Association of Young Entrepreneurs, Aurangabad and dated 24th July 2003 by the Chamber of Marathwada Industries and Agriculture. Many industrial units operating within the industrial area have tendered undertakings in the prescribed form in compliance with the directives issued by MIDC. It is, therefore, unacceptable that petitioners were not aware of the decision rendered in respect of revision of water rates by the Corporation and were also not communicated about such decision. Respondent-Corporation has also stated on oath that each industrial establishment has been communicated in the year 2001 and thereafter every time in respect of revision of water rates by the Corporation.

16. The argument advanced by petitioners regarding impermissibility of revision of water rates by the Corporation with retrospective effect is not acceptable. On perusal of the decisions rendered by the State Government in respect of levy of royalty for supply of water to MIDC at higher rates, contained in various Government Resolutions, it is difficult to accept the argument advanced by the petitioners that there is no nexus for upward revision of water charges by the MIDC. Petitioners have contended that no distinction can be made in respect of levy of water charges on account of user of water for normal industrial use or for use as a raw material for finished products. The distinction made for charging different rates in respect of user of water for normal industrial use as well as in respect of user as a raw material for manufacturing activity is based on intelligible differentia and is based on sound reasoning."

Consequently, High Court declined to quash the notices and disposed of the petition with 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 utilized 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."

24. Appellant in the year 2005 filed a writ petition before the High Court of Bombay which was registered as WP No. 5834 of 2005 challenging the Govt. Resolutions passed by Respondent no. 4 dated 12.09.2001, 24.10.2001 and 28.11.2002 along with letters issued by Respondent Nos. 2 & 3 dated 6.6.2005 and 24.6.2005 and prayed for quashing the same by issuance of writ of certiorari or such other writ and to direct the respondents to refrain from severing any water connections with respect to industrial units of the appellant. The High Court vide its order dated 6.9.2005 stayed the operation of the notices dated 6.6.2005 and 24.6.2005 and allowed the appellant to continue to pay the bills at the pre-revised/earlier rates and charges. Consequently, however, vide order dated 4.09.2009 High Court dismissed the Writ Petition of the appellant in terms of the decision of the coordinate bench of the said High Court in Writ Petition No. 4263/2005. The High Court held in the following manner: -

"(i) It will be open to the petitioners to submit documentary evidence before the respondents showing the water which they were using as a raw-material and the water which they were using for allied activities. The respondents thereafter to complete the entire exercise within 16 weeks from today.

(ii) On the petitioners providing such information supported by documentary evidence, the respondents to charge the petitioners in terms of the directions issued by this court in writ petition no. 4263 of 2005.

(iii) Considering direction no. 3 in paragraph 19 of

the Judgment in Waluj Industries Association, it will be open to the petitioners to make suitable representation in respect of revision of water rates effected from 2002 onwards and on receipt of the representation, the respondents shall take appropriate decision after considering the grievances raised by the respective petitioners."

25. Against the said decision of the High Court, appellant has filed the present appeal, on which, we heard the learned counsel appearing for the parties. Counsel appearing for the parties have taken us meticulously through the entire relevant materials on record.

26. Learned counsel appearing for the appellant contended that the High Court erred in ignoring that inter se classification of industrial users on the basis of their usage without any reasonable differentia is discriminatory and that respondents are not allowed to categorize industrial users into consumers of "water as raw materials" and consumers for other purposes without any reasonable classification. It was submitted by him that the notification dated 18.05.2005 being prospective in operation and that there being no specific stipulation that it would be retrospective in operation, the respondent could not demand tax at the revised rate from a retrospective date. It was also submitted by him that in view of clause 27 of the agreement there could not have been any demand from a retrospective date. Counsel also relied upon clause 5 of Circular dt. 27.5.2003 and submitted that the rate of water supply to the consumers under the industrial area using water as raw material should be the same as that of the rates in industrial area.

27. Counsel appearing for the respondents, however, not only refuted the contentions put forth by the counsel appearing for the appellant but also submitted that the demand for payment of water tax with arrear, payable by the appellant is just and proper, as there was a continuing liability to pay at increased rate from the year 2001 itself on the part of the appellant but

not paid pursuant to the representations filed by him. He also submitted that the irrigation department vide its circular dated 25th October, 2001 initially increased the rate of royalty by 10 times and the same was not altered even upon representations submitted by the aggrieved persons including the appellant and therefore the demand made, which is a subject matter of the appeal, cannot be said to be a retrospective demand made by the respondent. It was also submitted that industries using water as raw material stands clearly on an independent footing than the other industries not using water as raw material and, therefore, there is an intelligible criteria in making a clear distinction between two categories of industries.

28. In the light of the aforesaid submissions and the materials on record, we proceed to dispose of this appeal by recording our reasons.

29. The specific stand of the respondents in respect of their liability to supply water in lieu of water charges emanates from their responsibility of making water available to the residential houses, industries, factories and entrepreneurs and also to those industries where water is used as raw material and the corporation does not by itself generates water and instead of it procure water from the respondent nos. 1 [State of Maharashtra] and 4 [Department of Irrigation] and provides the same to the residential houses, industries, factories and entrepreneurs etc.

30. It is also a specific stand of the respondent that water is made available by corporation to its allottees at no profit no loss basis. The corporation obtains water from the Irrigation Department for which it is obliged to pay royalty and the charges as fixed by the State Government. The Corporation also has to revise water charges to cover the expenditure of water, particularly, taking into consideration the increase in royalty and water charges by the State Government as well as other factors like increase in price of water purification,

chemicals, energy charges, laying down pipelines, overhead tanks

and other factors.

31. There is no dispute with regard to the fact that the

State Government with effect from 1st September, 2001 upon

consideration of the recommendation of the Finance Commission,

Irrigation Commission and National Water Policy as well as the

deficit arising due to the then prevalent low rates of water

supply revised the water rates. Consequent upon the said

revision, the Corporation also had to revise water rates to put

in parity with the charges towards water supply by the State

Government. Consequent, there upon in the year 2001 itself the

appellant was intimated the revision of water rates by the

circular issued by the Corporation on 31.10.2001. A number of

representations came to be filed from various aggrieved persons

due to which a Circular dated 6.12.2001 was issued permitting

the industries to pay at the pre revised/earlier rates in order

to reconsider old rates in view of the fact that several

representations were pending and were being considered by the

State Government. The appellant himself submitted such a

representation intimating that they are not paying at the

increased rate in view of the pendency of the issue before the

State Government. The appellant also in the present proceedings

has admitted that they had knowledge about the increase of water

charges in the year 2001 itself.

32. Another communication dated 28.11.2002 was issued by the

State Government and in the said communication it was stated

that there is recession world over in the field of industry and
taking sympathetic view on the representation submitted by the

industrialists with the Government, a decision has been taken to

make some revisions in the rates of water cess of industrial use

of water. It was, however, made clear in the said communication

that no change has been made for the use of water by
the

industry producing drinking water and cold drinks/breweries

where water is being used as raw material. The Government

resolution communicated by the said resolution stated that rates of the industrial use are being doubled but so far industries where water is being used as raw material, for such industries the rates are being made 10 times.

33. A communication, however, came to be issued on 27.05.2003 by the Maharashtra Industrial Development Corporation referring

to circular dated 24.10.2001 and 28.11.2002 issued by the

Irrigation Department. By referring to Circular dated

28.11.2002, it was stated that water rate for industrial use has been decreased from 200 percent to 100 percent but the increase in residential use of water as raw material is confirmed.

34. Consequent upon issuance of the Circulars by the

Government regarding increase in the rate of water charges the matter of taking a policy decision in respect of water supply was put up before the Board of Directors of the Maharashtra

Industrial Development Corporation, who had taken a decision

that the rate of water supply of the consumers under the

industrial area using water as raw material, will be same as of the rates in industrial area. It was also intimated therein

that the representation seeking reduction of water charges is

under the consideration of the Government and therefore though

the bills are sent to the consumers at increased rate, a concession was given to pay the same at the earlier rate.

35. The Corporation issued yet another circular on 18.05.2005

and in this Circular reference was made to the Government resolution dated 28.11.2002 stating further that pursuant to the

State Government resolution a circular dated 11.06.2003 was issued stating therein as to how the rates fixed by the

Government resolution should be implemented. It was also stated

that by the aforesaid circular dated 11.06.2003 equal rates are

fixed for the water supply to all industries including the

industries using water as raw material in industrial area but while implementing the said policy it was found that in some industrial areas, the use of water by industries which are using water as raw material is in huge extent and that as the rates of water use as raw material are more than five time of the water tax rate of general industrial use, the financial burden of amount of difference is falling on the corporation.

It was also intimated that with a view not to put financial burden on the corporation, decision of amending the rates of water supply under industrial area has been taken. The rates of water supply of such consumers who use water a raw material was revised by extending the rates by Rs. 34.60 per cm of water supply of

respective industrial area issued vide circular no. G/7 dated 27.05.12003, the rates of water supply was amended from

01.11.2001. As to how water bills relating to the period from 01.11.2001 to 30.11.2002 should be recovered was also spelt out in the said notification.

36. Consequent thereto a letter was written to the appellant herein by Deputy Engineer, Maharashtra Industrial Development Corporation, on 06.06.2005 intimating him that he is required to pay water bills for the period from 01.11.2001 to 30.11.2005 as per revised rates.

37. It is, therefore, established from all the aforesaid policy decisions of the Government for increasing the rates of water supply charges and also from the resolution of the

Corporation taking a policy decision and also from the circulars issued for raising the water charges to 10 times that the decision was taken by the Corporation to increase the water charges based on the decision of the State Government to

increase such rates of water charges. The Corporation supplies water to all needy persons be it residential houses, industrial units or to those industries where water is used as raw material

on "no profit no loss basis".

Consequent upon revision of the

rates by the Government at which rate the Corporation is to make

payment to the Government, the Corporation has no other

alternative but to revise the same and follow the increase rates

as demanded by the State Government itself. The State Government

has increased the water charges so far those industries where water is used as raw material to 10 times and the said rates

were circulated by the Government to the Corporation in 2001

itself. The fact of such increase was intimated to all the

persons to whom water was supplied by the Corporation including

the appellant who was fully aware about the aforesaid increase

of water charges from 2001.

38. There cannot be any dispute to the fact that in the

industries like that of the appellant, consumption of water is

much more than all other types of industries as they use water

as raw materials. Requirement and use of water in these

industries is huge and therefore they are placed as one distinct

category or class of their own. These industries stand apart

from other industries and also differently situated from

residential houses. Therefore, there is an intelligible

differentia between these three categories so there is no

discrimination.

39. However, a demand for payment of water charges at the

aforesaid increased rates was for some time kept in abeyance in

view of the several representations pending at the level of the

Government from the aggrieved and affected persons including

that of the appellant.

But since the Government did not change

its position and informed the Corporation to make payment at the

revised rate which was increased in 2001 itself, the Corporation

has no other alternative but to release the payment of water

tax/bill at the increased rate demanded by the State Government.

Although in 2003 a policy decision was taken to charge half the

rate of the increased rate i.e. five times instead of ten times,

at par with the industrial uses, but later on it was found that

half the rate is not feasible and that what is being charged at the earlier point of time is required to be paid as Corporation's financial loss was continuously increasing. That policy decision of 2003 was also a stop gap arrangement which is indicated from paragraph 6 thereof and the said decrease finally came to be amended in the notification of 2005.

40. The appellant is receiving the facility of water supply from the Corporation and is obliged to pay at such rates which are demanded by the Corporation as the same rate is being charged by the Government. The Corporation cannot be asked to suffer a loss for extensive user of water by the appellant using water as raw material for its business as it is discharging its public and welfare duty for supplying water to help and assist industries like the appellant. The stand of the appellant that the increased rate of water charges is being demanded from them on a retrospective basis is erroneous and fallacious and not proper because it is established from the record that the appellant had the knowledge about the aforesaid increase in 2001 itself when the Government issued the notification intimating such increase which fact is an admitted position. Therefore, there is no violation of clause 27 nor is there any question of giving any retrospective effect to the aforesaid increase. It was also submitted that appellant was not paying increased water charges as the matter was pending for final consideration in view of several pending representations. In the pleadings before us, the said fact is clearly proved by the statement of the appellant in the affidavit filed.

41. We have gone through the judgment and order passed by the High Court in the coordinate Bench which was followed by the High Court in the present case. From the judgment it is distinctly indicated that while rejecting the contentions of the counsel appearing for the appellant the High Court has recorded cogent reasons for rejecting such contentions. We find no infirmity in the said reasons. We however make it clear that a

representation of the nature as suggested by the High Court could still be made by the appellant on all the grounds specifically mentioned therein and any other valid ground, which when filed would be disposed of expeditiously.

42. Consequently, we find no merit in this appeal and the same is dismissed with the aforesaid liberty and leaving the parties to bear their own costs.

.....J
[Dr. Mukundakam Sharma]

.....J
[Anil R. Dave]

New Delhi,
September 12, 2011.

ITEM NO.1A
(FOR JUDGMENT)

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

C.A. No. 7780/2011 (@ SLP(C) No. 7443/2010

(From the judgement and order dated 04/11/2009 in WP No.5834/2005 of The HIGH COURT OF BOMBAY)

PEPSICO INDIA HOLDING PVT.LTD.

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

Date: 12/09/2011 This Appeal was called on for pronouncement of judgment today.

For Petitioner(s) Mr. Dheeraj Nair,Adv.

For Respondent(s) M/S Fox Mandal & Co.,Adv.

Mr. Sanjay V. Kharde, I/C Govt. Adv.
Ms. Asha Gopalan Nair ,Adv

Hon'ble Dr. Justice Mukundakam Sharma pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Anil R. Dave.

Leave granted.

Appeal is dismissed in terms of the signed reportable judgment.

(NAVEEN KUMAR)

(RENU DIWAN)

COURT MASTER
(Signed Reportable Judgment is placed on the file)

COURT MASTER