

(2018) 05 BOM CK 0031

In the Bombay High Court

Case No : NOTICE OF MOTION NO.2955, 1869 OF 2011 , 244,2434 OF 2016,
420, 338 OF 2008

**SAJNBIR SINGH ANAND AND 2 ORS.Vs RAMINDER KAUR ANAND AND 8
ORS**

Date of Decision : 04-05-2018

Acts Referred:

Code of Civil Procedure, 1908 — Rule 13(2), 13
Limitation Act, 1963 — Article 113, 106, 123, 120, 110, 114 65

Citation : (2018) 05 BOM CK 0031

Hon'ble Judges : S.C. DHARMADHIKARI, A.A. SAYED, K.R.SHRIRAM

Bench : Full Bench

Advocate : Birendra Saraf, Jay Sanklecha, Sanaya Dadachanji, Rohit Lalwani,
Manilal Kher Ambalal, Cyrus Ardhesir, Shlok Parekh, Nilesh Modi,
Priyanka Pandya, Rustomji, Ginwala, Kunal Dwarkadas, Rachit Thakar,
Bhairavnath Jadhav, Kshitij Kadam

Judgement

A.S.OKA AND RIYAZ I. CHAGLA, J.

1.Both the petitioners who are claiming to be non-profit and voluntary associations registered under the Societies' Registration Act, 1860 have filed

the present petition making a grievance about the use of quantity of water by seventh to ninth respondents Cricket Associations and, especially for

the cricket matches of the Indian Premier League (for short IPL?). The sixth respondent is the Board of Control for Cricket in India which is

the body which controls sports of cricket in India. The seventh, eighth and ninth respondents are Mumbai Cricket Association, Maharashtra Cricket

Association and Vidarbha Cricket Association respectively. The third to fifth respondents are the Municipal Corporations of the cities of Mumbai,

Nagpur and Pune. The first respondent State of Maharashtra has set up the second respondent under the provisions of the Maharashtra Water

Resources Regulatory Authority Act, 2005 (for short "the Act of 2005"). When this petition was filed in April 2016, there were drought

conditions in the State of Maharashtra and there was an acute shortage of water. The first prayer in this petition is for issuing a writ of mandamus

directing that no matches of Indian Premier League should be allowed to be held in the State of Maharashtra. This prayer is confined to the year

2016. This prayer was disposed of by the judgment and order dated 13th April 2016 by which of IPL matches were ordered to be shifted outside the

State. The second prayer is for enjoining the first and second respondents to ensure that the water proposed to be used by the fifth to ninth

respondents is preserved. A direction is sought that first priority for utilization of the water is domestic use for drinking, cooking and hygiene and

sanitary use including live stock for agriculture. The next prayer is for seeking directions against the second respondent "Regulatory Authority to

follow the sections 11 and 12 of the said Act of 2005. Prayers (e) and (f) are based on the Water Policy of the Maharashtra State. Both these

prayers seek a direction in support of the plea that the State Government is bound by its own Water Policy and, therefore, it is contended that the

State should reconsider its decision of allowing sixth to ninth respondents to use the water by treating them as falling in the category (e)/ (d) "of

the Priority List forming part of the Water Policy.

2. The learned counsel appearing for the petitioners pointed out that even going by the case made out by the respondents, the use of water by the

respondents Cricket Associations for maintaining cricket grounds and pitches and for conducting matches will fall in the category of recreational use

which is the second last priority in paragraph 4 of the Water Policy. He invited our attention to the affidavits filed on record and the material placed

on record. He pointed out that huge quantity of water of not less than 60 lakh liter is required to maintain cricket grounds and pitches of the seventh

to ninth respondents. He pointed out that the State Government and the Municipal Corporations have given a go-by to the list of priorities by

supplying water to the said respondents and, therefore, the Municipal Corporations are violating the principle of equitable distribution of water. He

pointed out that if equitable distribution is to be achieved, from the public resources, water cannot be supplied for holding cricket matches and for

maintaining cricket grounds and pitches of seventh to ninth respondents.

3.The learned senior counsel appearing for the sixth respondent invited our attention to the affidavits in reply filed by the said respondents. He

pointed out affidavit dated 12th April 2016 of Professor Ratnakar Shetty filed on behalf of the sixth respondent in which the stand of the sixth

respondent is made clear. He pointed out that preliminary objections have been raised in the affidavit dated 7th April 2016 of Professor Ratnakar

Shetty. He pointed out that the stand of the seventh to ninth respondents' Cricket Associations in writing has been annexed to the first affidavit of

Shri Ratnakar Shetty dated 7th April 2016. As far as seventh respondent's Mumbai Cricket Association is concerned, the learned counsel

representing the said Cricket Association pointed out the affidavit of Shri Chandrakant S. Naik, its Chief Executive Officer which records that for

maintaining the ground of Wankhede Stadium, non-potable water supplied by private tankers is being used and no municipal water is being used for

the said purpose. He stated that there is a water connection taken from the Municipal Corporation only for the purpose of use in the offices in the

stadium, for flushing in toilets and for the use of spectators for washing hands. He pointed out that drinking water is supplied during matches to the

spectators in water pouches and water containers. It is also pointed out in the affidavit as to how seventh respondent is generating water source in its

property through rain water harvesting.

4.The learned senior counsel appearing for the eighth respondent's Maharashtra Cricket Association has placed on record two affidavits. The first

one is by Shri Riyaz Bagwan, Secretary of the said Association and the second one is by Shri Girish Jagannath Kudale, Manager, Estate and Services

of the said respondent's Association. The learned senior counsel pointed out that the eighth respondent has constructed a huge water storage tank

which is beneath the concourse level of the stadium which is having storage capacity of 16 lakh liter. He pointed out that the rain water which

accumulates in the drainage system is stored in the water tank. Moreover, the rain water harvesting has been adopted. Relying upon the affidavit of

Shri Girish Kudale, he stated that the agreement with the State Government has expired on 17th February 2012. A new agreement signed by the

eighth respondent has already been submitted to the State Government. He

submitted that unless the said agreement is executed with the State Government, the eighth respondent will not draw water from Pawana River.

5.The learned Additional Government Pleader tendered across the bar a copy of the said Water Policy which is in force. She also tendered on record a communication dated 9th January 2012 issued by the Assistant Chief Engineer of Water Resources Department under which a permission was granted to the eighth respondent to draw water from Pawana River for drinking purposes and for industrial purposes. She stated that the State Government is considering the prayer for renewal of the said agreement for further period of six years and the decision is likely to be taken by the month end.

6.The learned counsel appearing for the Mumbai Municipal Corporation tendered an affidavit of Shri Ajay Chaudhari, Assistant Engineer, Water Works which is dated 12th April 2018 and stated that the Municipal Corporation has granted 80 mm diameter connection to the Wankhede Stadium of the seventh respondent considering the requirement of the office working staff and toilets and bath rooms in the stadium. He stated that as stated in the affidavit, no special water supply is given for any type of matches or events held in Wankhede Stadium since last five years and the same policy would be continued in near future.

7.The learned counsel appearing for the petitioners relied upon newspaper reports to show that even during this year, more than 3,500 villages in the State are affected by water shortage and drought.

8.We have given careful consideration to the submissions. The issue of equitable distribution of water has been dealt with by this Court while

deciding PIL No.173/2013 (Marathwada Janta Vikas Parishad v. State of Maharashtra and others) decided on 23rd September 2016. The said

judgment notes that due to population explosion and climate changes as well as unsustainable growth in many areas, there has been destruction of

environment and the green cover has depleted. Moreover, there is an ever increasing demand for water supply for drinking and other domestic uses,

agricultural and industrial uses etc. In paragraphÂ1 of the said judgment, the Division Bench of this Court observed thus: â??1.A well known author

Leonardo da Vinci once said â??Water is the driving force of all nature. It is the water which gives life to everything.â? Justice Holmes said â??A

river is much more than amenity, it is a treasureâ. During last few decades, due to population explosion and climatic changes, the entire scenario has

undergone a change. There has been unsustainable growth in many areas which has led to destruction of environment. Ever depleting green cover of

the mother Earth and various other man made factors have brought about major climatic changes. The climactic changes have resulted into swings

between floods and drought. There is an ever increasing demand of water supply for drinking and other domestic use, agriculture, industrial use etc.

All this has made the water management as one of the most important and challenging issues of 21st Century. There is a huge challenge faced by the

policy makers and the Governments when it comes to equitable distribution of water. The failure of the State to make equitable distribution of water is

leading to serious conflicts. In fact, a leading author and economist Ismail Serageldin once observed in the year 1995 that the wars of 21st century will

be fought over water. Though this observation may appear be exaggerated, during the past few years, the State of Maharashtra has witnessed

agitations near various dams in the State in protest against release of water for the benefit of other regions. This Court has dealt with legal battles

between the groups of people belonging to different regions on sharing of water. This group of Petitions also is an instance of such a legal battle.â

(underline supplied) The same judgment also deals with the issue of equitable distribution of water. In paragraphÂ90, the Division Bench observed

thus: 90. Considering the fact that some of the submissions were made across the bar claiming existence of vested rights to get a particular quantity of

water from the dams/reservoirs/irrigation schemes on the basis of block system, it is necessary to consider the law on this aspect. During the last 25

years, the law on the doctrine of â??public trustâ? has been evolved in India. The ancient Roman Empire developed a legal theory of doctrine of

â??public trustâ??. It was founded on the idea that certain common properties such as rivers, seashore, forests and the air were held by Government in

trusteeship for the free and unimpeded use of the general public. Under the Roman Law, these resources were either owned by no one (Res

Nullious) or by every one in common (Res Communious). The doctrine of public trust has been dealt with by the Apex Court in M.C. Mehta v.

Kamal Nath and Others¹². Paragraph 25 of the said decision reads thus: â?? 25. The Public Trust Doctrine primarily rests on the principle that certain

resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them

a subject of private ownership. The said resources being a gift of nature. They should be made freely available to everyone irrespective of the status

in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for

private ownership 12 (1997) 1 SCC 388 or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following

restrictions on governmental authority: "Three types of restrictions on governmental authority are often thought to be imposed by the public trust:

first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the

property may not be sold, even for a fair cash equivalent; and third, the property must be maintained for particular types of uses." In paragraph 96, Division Bench held thus: "96. In the case of Cauvery Water Disputes Tribunal, Re (supra) the Apex Court in Paragraph 72 held thus:

"72. Though the waters of an inter-State river pass through the territories of the riparian States such waters cannot be said to be located in any

one State. They are in a state of flow and no State can claim exclusive ownership of such waters so as to deprive the other States of their equitable

share. Hence in respect of such waters, no state can effectively legislate for the use of such waters since its legislative power does not extend beyond

its territories. It is further an acknowledged principle of distribution and allocation of waters between the riparian States that the same has to be done

on the basis of the equitable share of each State. What the equitable share will be will depend upon the facts of each case. It is against the

background of these principles and the provisions of law we have already discussed that we have to examine the respective contentions of the

parties". (emphasis added) The same principle should apply to the territories within a State. Merely because a river flows from a particular region, or

a reservoir or a dam is in a particular region, the residents of that region cannot claim exclusive ownership over the flowing water or the stored water

. (underline supplied) Thereafter, this Court after considering clause (b) of Article 39 of the Constitution of India held that it is the duty of the State

to ensure that water is distributed so as to subserve the common good and, therefore, there has to be an equitable distribution of water by the State

by acting fairly and justly.

9. In the context of the challenge in this petition, it is necessary to consider the Maharashtra State Water Policy (for short – the said Water Policy)

published in July 2003. Clause 4 of the said Water Policy lays down the priorities of the water usage. It lays down that the water usage shall be

allocated in accordance with the following general principles:

(a) Domestic use for drinking, cooling, hygiene and sanitation needs including live stock;

(b) Agricultural (use of water for irrigation);

(c) Industrial, commercial use, agro based industrial use and for generating electricity; (d) Environment and recreation uses;

(e) All other uses. Clause 2.2.3 of the Policy reiterates that drinking water needs of human beings and animals shall be the first priority on any

available water.

10. The meaning of the priorities laid down in clause 4 is that the first priority for allocation of water will be for the uses covered by category (a) and,

thereafter, the allocation will be in the order specified in clause 4. At a given time, if there is an acute shortage of water and the water available is

not sufficient to meet the uses covered by category (a), the State will be justified in drastically reducing or restricting the supply to the uses provided in

subsequent categories. For that matter, if the situation demands, the State can refuse the water supply to a particular user falling in the categories (b)

onwards.

11. In the present case, as per the stand taken by the sixth to ninth respondents, cricket matches including IPL matches will fall in the category of use

for recreation. After having perused the categories in clause 4 of the Water Policy, we find that the cricket matches will not fit in any other

category. Therefore, as far as allocation of water is concerned, the requirement of cricket stadiums of seventh to ninth respondents will fall in the

second last category of the priority.

12. None has appeared for the ninth respondent. However, to the affidavit of Shri Ratnakar Shetty dated 7th April 2016 filed on behalf of the sixth

respondent, a copy of the letter dated 6th December 2016 addressed by the Honorary Secretary of the ninth respondent has been annexed. The said

letter records that the said Association has not taken any water connection from the Municipal Corporation or from any local authority. Even for drinking purposes, the water from the wells is being used after treating the same in a plant. It is further stated that at the time of cricket matches, drinking water is provided to the spectators in water pouches. It is further stated that water which is used for maintaining ground and pitches is drawn from the underground wells. It is also stated that the said respondent has made arrangement for rain water harvesting technique which has helped to maintain water level in the well. There is no reason to dispute the correctness of the statements made by the ninth respondent as nothing contrary is brought on record. Therefore, it cannot be said that either the State Government or the Municipal Corporation is supplying water to the stadium of the ninth respondent in breach of the State Water Policy.

13.As far as seventh respondent's Mumbai Cricket Association is concerned, there is an affidavit filed by Shri Chandrakant S. Naik. The learned counsel appearing for the said respondent reiterated the statements made therein by stating that for maintaining the ground and pitches thereon, not potable water supplied by the private tankers is being used and no municipal water is being used. He has stated that the municipal water supply is restricted to the use of the offices in the stadium complex, for flushing toilets and for spectators for washing hands. In clauses 9 and 10 of paragraph 3, it is pointed out as to how the sources of water have been created by digging wells and by adopting rain water harvesting techniques.

14.Shri Ajay Chaudhari has filed affidavit on behalf of the Mumbai Municipal Corporation. Paragraphs 1 and 2 of the said affidavit read thus:

1.I say that on 3rd April, 2018 when the present PIL was taken up for hearing, it was orally informed to the Hon'ble Court that this Corporation after taking into consideration the requirement of offices and working staff and also the requirement in toilets and bathrooms has sanctioned/ granted 80mm dia metered water connection to the Wankhede Stadium. And the Corporation recovers charges from them as per commercial rate as applicable i.e. Rs.49.16 Per 1000 ltrs. 2.I say that no special water supply is being given for any type of matches or events carried out at Wankhede Stadium since last five years and same policy would be continued in near future. Similarly, this Respondent till date has not received any application

from the Wankhede Stadium for additional water supply other than the existing water supply on any ground.â? (emphasis added) We accept the statements made in the affidavit of Shri Ajay Chaudhari as the statements made on behalf of the Mumbai Municipal Corporation. The learned counsel appearing for the seventh respondent stated that for the present IPL season, the seventh respondent has not applied to the Municipal Corporation for water supply for maintaining the Wankhede stadium ground and pitches. We also accept the said statement. There is a statement filed by the learned counsel for the Mumbai Municipal Corporation signed by the Hydraulic Engineer and Deputy Hydraulic Engineer of the said Municipal Corporation which records that in the year 2016, the water supply to the Wankhede Stadium was 19,000 liters per day.

15. Now coming to the Maharashtra Cricket Association, the learned AGP has placed on record a communication/ order dated 9th January 2012

issued by the Assistant Chief Engineer of the Water Resources Department, Pune under which the said Association was permitted to draw water

having quantity of 0.0876 million cubic meter from Pawana River out of which 50% is for industrial use and 50% is for domestic use. Along with an

affidavit of Shri Girish Kudale dated 18th April 2018, the eighth respondentâ? Maharashtra Cricket Association has placed on record a copy of the

agreement dated 17th February 2012 executed by and between the said respondent and the Executive Engineer, Khadakwasla Irrigation Division,

Pune. The agreement permitted the eighth respondentâ? Association to draw water having quantity of 0.0876 million cubic meter water directly from

river Pawana. It is stated that 50% of the said water was to be used for industrial use (stadium and stadium activities) and remaining water for the

domestic use. The learned counsel appearing for the eighth respondent stated that the said respondent is not running any industry. He stated that

the term of the said agreement has expired and unless a new agreement is executed, the said respondent will not draw water from the said river

Pawana. We accept the said statement.

16. The communication dated 9th January 2012 and the agreement dated 17th February 2012 granted permission to the eighth respondent to draw large

quantity of water from Pawana river, 50% of which was to be used for industrial purpose. The communication dated 9th January 2012 records that

as a result of grant of permission, the irrigation capacity of the Pawana Project will be reduced by five hectares. It shows that the water which was to be used for irrigation has been diverted for recreational activities of the stadium. In the order of priority laid down by the water policy, use for agriculture is the second highest priority and for recreation is the fourth priority. We are shocked to note that for a period of six years, the State Government allowed the eighth respondent to draw water from Pawana river for the industrial use though, admittedly, the said respondent was never running any industry. Obviously, the water drawn from Pawana river for industrial use was used for its stadium. The action of the State Government of granting water to the eighth respondent for industrial use is not only arbitrary being contrary to the policy, but the same completely violates the principle of equitable distribution. The State is the trustee of the water available in rivers and, therefore, the State cannot grant water supply for industrial use to the eighth respondent though the said respondent is admittedly not running any industry and it is not its function to run an industry. We, therefore, hold that the water supply by the State to the eighth respondent for industrial use is completely illegal.

17. In the note submitted by the eighth respondent which is appended to the affidavit of sixth respondent dated 7th April 2016, a contention has been raised by the said respondent that in a city like Mumbai, huge water is supplied to Golf Courses which do not generate any revenue to the State Government. However, the learned senior counsel appearing for the eighth respondent stated that the said respondent will withdraw the said contention. The pending application of the eighth respondent for renewal of the earlier agreement will have to be decided in the light of the findings recorded by this Court in this judgment.

18. As regards the second respondent's Authority, no directions are required to be issued as regards its functioning. The same will be governed by the law laid down by this Court in *Marathwada Janta Vikas Parishad v. State of Maharashtra and others* (supra).

19. Hence, we pass the following order:

(i) We hold that the permission granted by the State Government to the eighth respondent to directly lift water from Pawana river for industrial use is completely illegal;

(ii) We hold that while deciding the pending application made by the eighth respondent for renewal of the agreement dated 17th February 2012, the

State Government is not entitled to grant permission to the said respondent to draw water from Pawana river for industrial use. The pending

application shall be decided in the light of what is held in this judgment;

(iii) As regards the seventh respondent, we accept the statements made on oath in the affidavit filed by Shri Ajay Chaudhari on behalf of the Mumbai

Municipal Corporation as statements of the Mumbai Municipal Corporation. We accept the statement made by the learned counsel appearing for the

seventh respondent as well as the statement made in the affidavit of Shri Chandrakant Naik filed on behalf of the said respondent that no water supply

is being taken from the Municipal Corporation for maintaining the ground and pitches in the Wankhede Stadium. In view of the statement made in

paragraph 2 of the affidavit of Shri Ajay Choudhari which is an undertaking of the Mumbai Municipal Corporation, it is not necessary to issue any

specific direction to the Mumbai Municipal Corporation as the said Corporation has undertaken not to supply water to the Mumbai Cricket Association

for maintaining ground and pitches in the Wankhede stadium;

(iv) We accept the statements made by the authorized representative of the ninth respondent, Vidarbha Cricket Association in his letter dated 6th

April 2016 addressed to Professor Ratnakar Shetty. In view of the said statements, no directions are required to be issued against the said

respondent and the Nagpur Municipal Corporation.

(v) Rule is partly made absolute in the above terms with no order as to costs.