

(2016) 04 BOM CK 0039
In the Bombay High Court
Case No : PIL Petition No. 64 of 2015

Sanjay Bhaskarrao Kale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Constitution of India, 1950 — Article 38, 39, 47

Citation : (2016) 04 BOM CK 0039

Hon'ble Judges : S.S. Shinde; Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : S.B. Talekar, Advocate, for the Appellant; A.B. Girase, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

1. There are multiple prayers in the Petition, however, the learned counsel appearing for the petitioner submits that at present the petitioner is seeking directions to stop the supply of water for manufacturing of liquor and make available the said water for drinking purposes to the citizens as per the State Water Policy, 2011.

2. The learned counsel appearing for the petitioner submits that because of drought and acute scarcity of water many people and particularly the farmers are striving for their lives. The citizens are not being provided with drinking water. However, the production of liquor is no way affected, though there is acute scarcity of water. The respondents are under a legal obligation to provide water to the citizens for drinking rather than for liquor production, which directly or indirectly adversely affects the health of the citizens. As per Article 47 of the Constitution of India, the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs, which are injurious to health. Since 2008, the

problem of drought/scarcity of water is threatening the lives and livelihood of many people in the State of Maharashtra. The major portion of the State of Maharashtra, and particularly the Marathwada region, is affected by drought. Many people do not even get potable drinking water. They have to rely on water-tankers or have to hunt across miles in search of water. It is submitted that in the year 2014, 90 Lakh farmers in Maharashtra have been affected by the drought, that has devastated the Kharif crop, as per the official data. It is submitted that in 2013, the State faced the worst drought situation. The plight of the farmers is getting worst due to scarcity of water. The drought and scarcity of water in the State of Maharashtra have multiplied the problems like unemployment, insolvency, farmers' suicides, cruelty to animals, etc. Despite the drought and scarcity of water, huge quantum of water is being utilized by the liquor industries for production of liquor instead of using the same water for drinking or agricultural purposes. It is submitted that for manufacturing one liter of beer, wine, country liquor or Indian made foreign liquor, a large quantity of water is being used, which is evident from the relevant extract obtained from the Website, showing water footprints used in liquor, the copies whereof are placed on record. Considering the aforesaid ratio for producing 3,68,54,66,513.14 Bulk Liters (B.L.) liquor, the industries in the State of Maharashtra require approximately 30,790 Million Cubic Feet (MCft) i.e. almost 60 Thousand Million Cubic Feet (TMC) water per year. It is further submitted that as per the official record almost 60 TMC water is utilized per year all over the State of Maharashtra in the process of manufacturing liquor. Unauthorized lifting of water for the said purpose may be upto 30 TMC. Therefore, around 90 TMC water is consumed in the process of manufacturing liquor. The requirement of water in major cities in the State of Maharashtra is less than 20 TMC per year. Moreover, the requirement of Aurangabad City is 0.6 TMC water per year. The reason as to why so many breweries, wineries and distilleries are coming up at the outskirts of Aurangabad, more particularly, on Pune road near Gangapur Phata is obvious i.e. the easy availability of water from Jaikwadi dam, which, in fact, should legally be used to satisfy drinking and irrigation needs of the region. It is submitted that huge quantity of liquor is being manufactured in the State of Maharashtra though there has been extreme scarcity of water. As per the statistical data 3,68,54,66,513.14 B.L. country liquor, beer, wine, Indian made foreign liquor was manufactured in year 2010-2011.

3. The learned counsel invited our attention to the information gathered in tabular form in para 14 of the Petition, which is as under :-

Sr. No.

Type of liquor

Production Quantity (B.L.)

1

Country Liquor

31,85,75,881.34

2

Indian Made Foreign Liquor

11,36,31,588.80

3

Beer

3,08,18,50,010.00

4

Wine

17,14,09,033.00

Total

3,68,54,66,513.14

The learned counsel appearing for the petitioner has placed on record the chart showing the statistical data prepared by Respondent No.1 in respect of manufacturing country liquor, beer, wine, Indian made foreign liquor during year 2010-2011. The learned counsel further submits that it is rather a curious finding that for the year 2010-2011 there were only 4,54,772 persons who were holding the licence for consumption/ possession/transport of liquor. The learned counsel invited our attention to the information gathered in tabular form in para 17 of the Petition for the said purpose. It is further submitted that when there were only 4,54,772 consumers in the State of Maharashtra, there was no need to waste near about 4045 TMC water for the purpose of manufacturing excess liquor.

4. The learned counsel appearing for the petitioner invited our attention to the exposition of law in the case of A.P. Pollution Control Board I v. Prof. M.V. Nayudu (Retd.) and ors, (2001) 2 SCC 62, and submitted that the right to access to drinking water is fundamental to life and there is a duty cast on the State under Article 21 to provide clean drinking water to its citizens. The Hon'ble Supreme Court time and again has held that the directive principles of State Policy are supplementary and complementary to the fundamental rights. It is the duty and obligation of the State under Articles 21 and 47 of the Constitution of India, to provide potable water to its citizens and to prohibit excess consumption of alcohol which is injurious to health. It is submitted that even as per the State Water Policy 2011, the preferences will have to be given firstly to drinking purposes, secondly to the agricultural purposes and thirdly to Commercial purposes. It is submitted that it is the duty of the State to provide clean water for drinking. If the basic drinking water need of every citizen is satisfied, then it shall be provided for agricultural purposes and then for commercial purposes. However, since last 7 years, commercial sector is getting adequate water

whereas hundreds of people are suffering for want of potable drinking water, leave alone the harm caused to livestock and agriculture. The rate of farmers' suicide is increasing in the State due to drought and scarcity of water, whereas the commercial sector is thriving on the ashes of these farmers. Such a industry-driven State action is not only unconstitutional but against the very fabric of a welfare State. It is submitted that the liquor production has remained unaffected even in the harshest droughts faced by the State.

5. It is submitted that in 2013 summer season, the State saw its harshest drought - millions were affected, lakhs of cattle rendered hungry without fodder, it was the worst kind of natural disaster that the State has faced. Almost 1/5th of Maharashtra is reeling under drought. It is submitted that according to a recent study about potable drinking water in Maharashtra - during February-May, the situation is exacerbated by unregulated ground water abstraction for the purpose of irrigation and industrial uses. The holistic management of groundwater resources is typically absent according to a recent census of India 2011 Assessment. It is submitted that during summers of impending droughts though the swimming pools are shut down, excess water consumption for most activities is stopped; there is no regulation of water usage by the liquor industry. It is submitted that the Maharashtra Water Resources Regulatory Authority [MWRRA] Act, 2005 requires every person / industry to possess entitlement before using water for any purpose from any source of water in the State of Maharashtra, and has laid down guidelines based on which such entitlements may be given. However, the liquor industry is burgeoning in the wake of grim realities of the drought for the common man in the state and no heed is being paid to the mandate of the Act.

6. It is submitted that either there is waste of water or waste of excess liquor manufactured or there is unauthorized production, sale, distribution and consumption of liquor in the State of Maharashtra. The learned counsel invited our attention to the information received by the petitioner under Right to Information Act from Respondent No.1, vide letter dated 20th June, 2011, thereby depicting excess/unauthorized production of liquor in the State of Maharashtra from the statistical data from the year 2006 to 2010. It is submitted that as per the Government Resolutions dated 23rd February, 2005 and 2nd February, 2008 issued by Respondent No.1, no action is initiated against the officials who were negligent in prohibiting or controlling excess/unauthorized production of liquor in the State of Maharashtra. It is submitted that by the Government Resolutions dated 23rd February, 2005 and 2nd February, 2008 Respondent No.1 State Government has issued directions to constitute Committee in every Taluka of the State of Maharashtra consisting 50% of women to control and prohibit unauthorized production, sale, distribution and consumption of liquor. The learned counsel invited our attention to the aforementioned Government Resolutions, which are placed on record at Exhibit 'I' and 'J'. It is submitted that no such committee is constituted pursuant to the aforementioned Government Resolutions till date in any talukas of the State

so as to control and prohibit unauthorized production, sale, distribution and consumption of liquor. The learned counsel appearing for the petitioner further submitted that there is a strong nexus amongst the issues like poverty, unemployment, crime-rate, domestic violence, human development and alcoholism. Furthermore, 35% of suicide cases had a background of alcohol abuse. It is submitted that as per the State Water policy, drinking and agriculture purposes shall be given preferences rather than commercial purposes. Liquor production is one of the most water consuming commercial process and neither healthy nor essential to human life, therefore, manufacture of liquor can be stopped till the need of drinking and agriculture subsists.

7. Relying on the judgment in the case of *Khoday Distilleries Ltd., and others v. State of Karnataka and others*, (1995) 1 SCC 574, he submits that trade in liquor is not a fundamental or constitutional right. The learned counsel also placed reliance on the judgments in the cases of *M.C. Mehta v. Kamal Nath and others*, (1997) 1 SCC 388, *Mr. 'X' v. Hospital 'Z'*, (1998) 8 SCC 296, *State of Punjab and another v. Devans Modern Breweries Ltd., and another*, (2004) 11 SCC 26, *State of Orissa v. Government of India and another*, (2009) 5 SCC 492 and *M.K. Balakrishnan (2) and others v. Union of India and others*, (2009) 5 SCC 511 on the same point.

8. It is submitted that in P.I.L. No. 154 of 2015 filed against release of water for Shahi Snans on the eve of Kumbhamela, the Division Bench at Principal Seat entertained Petition against release of water for Shahi Snans. The directions were issued holding that the right to drinking water is a fundamental right guaranteed under Article 21 of the Constitution of India and there was gross breach of Article 21 of the Constitution of India. It is submitted that in the said Petition, the High Court has shown utmost concern for utilization of water for drinking purpose when the entire Maharashtra was reeling under the worst kind of drought during the last century. It is further submitted that in P.I.L. No. 33/2016, the Division Bench at Principal Seat has issued certain directions so as to stop actual release of drinking water for watering pitches of IPL matches in Maharashtra. It is submitted that the water storage in major, medium and minor reservoirs in Maharashtra is depleting very fast in the wake of scorching summer. As the temperature is increasing day by day, there is tremendous evaporation of water from the reservoirs in Maharashtra. It is in this context it would be very much necessary that the production of country liquor, county made foreign liquor, beer and wine is required to be altogether stopped at once so that besides the people of Marathwada, the livestock and birds would not die for want of drinking water. Loss of livestock and particularly that of wild life would have a devastating impact on the environment. In order to preserve the human beings, livestock and the environment it is utmost necessary to stop manufacturing of liquor in any form and divert the water saved therefrom for drinking purpose.

9. The learned counsel appearing for the petitioner invited our attention to the observations made by the Division Benches of the High Court at Principal Seat in

P.I.L. No. 154 of 2015 (Hiralal Motilal Desarda v. The State of Maharashtra, through its Principal Secretary, Water Resource Dept. and anr) and also P.I.L. No.33/2016 (Loksatta Movement and Anr. v. The State of Maharashtra and others), and submitted that this Court may pass appropriate orders in the interest of justice.

10. The learned counsel appearing for the petitioner further submitted that the beer/wine factories have stored a large quantity of water in their respective Reservoirs taken through canals from Mula Dam, and that the same should be made available to the public for drinking purpose. He also submitted that considering the priority order for use of the water as per the National and State Water Policies, the first priority needs to be given for drinking water and at least, the percentage of the cut to the supply of water to the industrial purpose should be at par with the percentage of supply of drinking purpose. He then submits that for Aurangabad and Jalna cities, there is reduction of 75% and 90% respectively in the supply of drinking water. There are 7690 villages, which are getting less than 25% of the regular water supply. In the above circumstances, he prays that the water supply for manufacturing beer, liquor, country made foreign liquor, wine, etc. may be completely stopped immediately.

11. The learned Government Pleader appearing for the Respondent/State, relying upon the affidavit-in-reply filed by one Manohar Kisan Pokale, presently working as Superintending Engineer and Administrator, Command Area Development Authority, Aurangabad, submitted that the Government of Maharashtra has implemented various schemes for supplying drinking water in the State of Maharashtra. He invited our attention to the figures of average rain fall during the period from 1st June, 2015 to 31st October, 2015 in the State of Maharashtra. He submitted that the rainfall during this year is below average and due to such subdued and scanty rainfall, higher temperature and other climatic reasons, availability of water in all major, medium, minor irrigation projects in Marathwada region has been reduced to a great extent. It is submitted that keeping in view the drought situation, the State Government is giving first importance to provide drinking water for the citizens as well as live stock in this region. He submitted that so far as Aurangabad district is concerned, the water Resources Department prepared a chart giving details of the storage capacity, current level of water in all large, small and medium water reservoirs in Aurangabad district. He invited our attention to the chart showing supply of water from Jaikwadi project reservoir for drinking purposes to the Municipal Corporation/Councils of Aurangabad, Jalna, Gangapur, Georai, Shevgaon, Newasa, Pathardi and several village Panchayats. It is submitted that out of 625.21 Million Cubic Meter (MCUM) water, only 260.95 (Million Meter Cube) (MMC) water is available for lifting, out of which 0.15 MMC i.e. 150 Million Litre water (MLD) per day supplied to the Aurangabad Municipal Corporation, 0.023 MMC water for Jalna Municipal Council, 0.050 MMC for other rural area for drinking and domestic purposes. So far as industrial water supply is concerned, 0.056 MCUM for the MIDC Waluj and 0.004 MCUM for Paithan MIDC area is

supplied per day.

12. It is submitted that considering the factual situation of remaining water available as on today at Jaikwadi water reservoir and considering the daily usage of water, water is available for next 105 days. It is submitted that the Collector, Aurangabad held a meeting with all the concerned Departments and after evaluating emerging situation, it was decided to deduct 10% of water supply of other industries and 20% of water supply of industries pertaining to production of beer, liquor and other Breweries. It is submitted that so far as total 56 MLD water supply to MIDC is concerned 22 MLD water is used for domestic purpose i.e. supply of water to Waluj residential zone, Waluj Mahanagar and several Gram Panchayats and total consumption is 18.50-MLD and the remaining 3.5 MLD water supply through tankers by the District Administration for the drinking purpose. As such only 34 MLD water is being used for the industrial purpose, out of which 29.86 MLD is being used for the general industries and 4.14 MLD water for the beer, liquor and other Breweries. This itself shows that out of total supply of water only 1.5% of water is given to the MIDC. Even MIDC supplied more than 40% of water for drinking purpose to the citizens.

13. It is submitted that considering the present drought situation emerged in the State of Maharashtra and scarcity of water as reflected from the present situation indicated by the Water Resources Department, the effective steps have been taken by the District Collector, Aurangabad, thereby reducing 10% of water supply meant for industrial purpose and 20% of water supply meant for the industries producing Beer, Liquor and Breweries.

14. One additional affidavit in reply is filed by one Shashikant Maroti Hadgal, working as Sub-Divisional Officer, Aurangabad on 22nd April, 2016. Relying upon the said affidavit in reply, the learned Government Pleader submitted that all the citizens residing in the State have a right to have access to sufficient quantum of quality drinking water. It is further submitted that due to elude and scanty rain fall, water availability in some parts of the State is not adequate. First priority of the State is to provide drinking water in the State of Maharashtra and efforts are being taken to supply safe and adequate drinking water. It is submitted that the meeting was called by the District Collector, Aurangabad for discussion to close down the industries for 40 days due to curtailment of water supply. After discussion, the representatives of the Liquor Industries stated that M.I.D.C. has already curtailed 30% of water supply of the Liquor Industries. The representatives of those industries showed willingness to curtail their water supply by 5% periodically. He invited our attention to the minutes of the meeting dated 21st April, 2016, and submitted that the representatives of the industries showed willingness in the said meeting to curtail 5% water supply after every 15 days. It is submitted that the President of Chamber of Marathwada Industries and Agriculture namely Ashish Garde, one Balaji Shinde and Ashok Chaure have addressed a letter to the District Collector, Aurangabad, submitting a plan for reduction in water supply to industries to face drought wherein, it is stated that

Breweries and Distilleries have a process cycle of 15 days, hence increased water cut is recommended after every 15 days. Maximum water cut over the current consumption is taken as 15%. The closure of units will have short term as well as long term impact. To avoid this emergency, rest of the industry is ready to conserve water and ready to accept reduction of water by 5%. It is requested not to stop supply of water for beverage companies (soft drinks), as they consume very small quantity, their business is seasonal and most importantly, they consume huge agro produces like mango and some other fruits, which helps survival of farmers. He further invited our attention to the contents of the said letter and submitted that M.I.D.C. has already curtailed 10% of water supply before filing P.I.L. and 20% more w.e.f. 18th April, 2016. As such, 30% water is already curtailed to the liquor industries. Those industries also showed their willingness to curtail their water supply by 5% periodically, which goes upto 45%. Other Industries also showed their willingness to curtail their water supply. Therefore, it submitted that the administration and also the Association of Industries have responded positively for curtailment/reduction/cut of the water supply, as indicated above.

15. One Shri Yashwant Manga Pawar, working as Divisional Deputy Commissioner, State Excise, Aurangabad Division, Aurangabad has filed the affidavit-in-reply on 22nd April, 2016 stating therein that so far as Beed district is concerned, information supplied by the Superintendent, State Excise, Beed shows that 2 industries i.e. Vaidyanath Co-operative Sugar Factory's Distillery at Parli and Sundarnagar Co-operative Sugar Factory, Majalgaon are having licence of production of spirit and ENA. At present the said industries are closed and as such, are not operational. It is submitted that so far as Hingoli district is concerned, information supplied by the State Excise Department reveals that one Purna Cooperative Sugar Factory Ltd., Basmathnagar is having licence of production of rectified spirit. At present operation of the said distillery has been stopped. It is submitted that so far as Parbhani district is concerned, one Gangakhed Sugar and Energy Ltd., Makni, Gangakhed is having unit of production of industrial alcohol and rectified spirit. The said distillery has stopped functioning. So far as Jalna district is concerned, one Samarth Co-operative Sugar Factory Ltd., Ankushnagar, Dist. Jalna is having production of rectified spirit. The said distillery is not in operation. It is submitted that so far as Dhule district is concerned, there is no industry pertaining to production of liquor, beer, alcohol in operation. It is submitted that so far as Nandurbar district is concerned, one Satpuda Tapi Parisar Cooperative Sugar Factory Ltd., is running distillery thereby producing rectified spirit and country liquor. It is in operation. This industry uses water from its own sources i.e. Borewell and riverse plant water from waste water treatment plant. The State Government is not supplying water to the said factory.

16. It is submitted that so far as Osmanabad district is concerned, out of 9 industries producing liquor, rectified spirit or industrial spirit, 7 industries are not in operation today. Only 2 industries i.e. M/s Vitthal distillery and Adlers Bio

Energy Ltd., are in operation. The source of water of the said industries is their own borewell and well. The State Government does not supply water to these industries. It is submitted that so far as Latur district is concerned, out of 5 industries producing rectified spirit, ethanal, industrial spirit, 3 industries are not in operation at present. The remaining 2 industries i.e. Alcopas MIDC and Rajlaxmi MIDC are purchasing raw material from other industries and are having their own water supply. The State Government does not supply water to these industries. It is submitted that so far as Nanded district is concerned, 2 industries producing liquor, rectified spirit, industrial spirit are operational. One Pioneer Distilleries Ltd., Balapur, Tq. Dharmabad and Bhaurao Chavan Cooperative Sugar Factory are running their distilleries. These distilleries are having their own source of water i.e. Borewell and well and from Godavari river. The State Government does not supply water to these industries. It is submitted that as far as Jalgaon district is concerned, there is only one distillery is operational, run by Madhukar Cooperative Sugar Factory, which is having its own source of water i.e. Tube well. The State Government does not supply water to the said distillery.

17. It is submitted that so far as Ahmednagar district is concerned, there are 10 industries producing foreign liquor, country liquor which are operational. The source of water of these industries is canal as well as their own wells and borewells. It is submitted that so far as Aurangabad district is concerned, there are 16 industries producing foreign liquor, country liquor, beer, industrial spirit, rectified spirit and extra neutral alcohol. One of the country liquor units is not in operation. Out of these industries Deccan Bottling and Distillery, Kokan Agro Ltd., and Grainotch Industries are having their own tube wells and wells as source of water and remaining industries get water supply from the Maharashtra Industrial Development Corporation (MIDC). It is submitted that so far as rest of Marathwada is concerned, information collected from the State Excise Department shows that there are total 129 units holding licences/permits for manufacturing foreign liquor, country liquor, beer, industrial spirit, rectified spirit and extra neutral alcohol, out of which 30 industrial units have been either closed down or not in operation at present. At present 99 industrial units are in operation manufacturing foreign liquor, country liquor, beer, industrial spirit, rectified spirit and extra neutral alcohol. The learned Government Pleader says that the reduction of water supply to the liquor/beer industries and other industries may be approved as proposed above.

18. Shri S.V. Adwant, the learned counsel appearing for the intervenors submits that the supply of water for the industries of the intervenors has already been cut to a large extent. If there is further cut of the supply of water, the said industries would be required to be closed. In that event, 15,000 families of the workers engaged in breweries/distilleries and other related industries would be adversely affected. Moreover, keeping the said industries closed for 40 days would deprive the State revenue of more than RS. 500 Crores. He submits that the State has already taken a decision to curtail water supply by 20% to the

industries and 30% to the breweries/distilleries. The intervenors, in the meeting with the District Collector, Aurangabad have shown their willingness to curtail 5% of water supply from 24th April, 2016, further 5% from 8th May, 2016 and then additional 5% from 23rd May, 2016, having total of 15%, keeping in view the acute shortage of water for drinking purpose. He, therefore, submits that no further cut should be made applicable to the water supplied to the industries of the intervenors.

19. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned Government Pleader appearing for the Respondent/State. With their able assistance, we have perused the pleadings and grounds taken in the Petition, annexures thereto, short affidavit filed by the petitioner in continuation of the Petition and also the affidavit-in-reply filed on behalf of the Respondents.

20. Whether the High Court can exercise its extraordinary jurisdiction to entertain the cause brought before this Court by the petitioner, seeking directions to the Respondents to give utmost priority to supply drinking water to the millions of citizens in Maharashtra and in particular within the territorial jurisdiction of this High Court Bench, when there is acute scarcity of water and a severe drought situation, needs to be answered first before proceeding to deal with the issues brought before us. There are two essential requirements of the human life firstly, fresh air and secondly, potable water. Without these two things, human being cannot survive. The same is applicable in case of animals and birds. The Hon''ble Supreme Court in various expositions, has interpreted Article 21 of the Constitution of India and has taken a view that right of access to clean drinking water is fundamental to life. Duty lies on the State to provide clean drinking water to its citizens. In various pronouncements, this view has been reiterated by the Hon''ble Supreme Court. This Court, in the case of *Dhanajirao Jivarao Jadhav and others v. State of Maharashtra and others* [1998(2) Mh.L.J. 462], had an occasion to consider the need of potable water of citizens of Kolhapur city and it has been held that the right of access to clean drinking water is a fundamental right and State is bound to supply potable water to the citizens.

21. It would be gainful to refer to Articles 38, 39 and 47 of the Constitution of India, which have direct nexus with the issues raised before this Court, which read thus :

"38. State to secure a social order for the promotion of welfare of the people. -
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different

areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State.-The State shall, in particular, direct its policy towards securing -

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medical purposes of intoxicating drinks and of drugs which are injurious to health."

22. The Hon"ble Supreme Court in the case of M.K. Balakrishnan and Ors. v. Union of India and Ors. [AIR 2009 SC (Supp) 1916], held that right to life includes right to get water.

In the case of A.P. Pollution Control Board II v. Prof. M.V. Nayudu [(2001) 2 SCC 62], it has been held that right of access to clean drinking water is fundamental to life. Duty lies on the State to provide clean drinking water to its citizens.

In another judgment in the case of Research Foundation for Science (16) v. Union of India [(2005) 13 SCC 668], the Supreme Hon"ble Court held that hygienic, clean and safe environment, right to air and drinking water is right to life under Article 21 of the Constitution of India.

Therefore, it is abundantly clear that various High Courts and the Hon"ble Supreme Court have taken a view that right to potable water is a fundamental right of the citizens, and therefore, for enforcement of fundamental rights, the citizens can approach the High Court and the High Court is well within its jurisdiction to entertain such causes/issues brought before it.

23. Recently Bombay High Court at Principal Seat in P.I.L. No. 154 of 2015, while

considering issue of supplying water for Shahi Snans in Kumbhmela has considered clause 4.0 of the Maharashtra State Water Policy and after considering the said clause held in the order dated 14th September, 2015 that the priority for the use of the water resources has been laid down by the water policy of the State of Maharashtra. If we go by the said priority list, the top most priority as per clause 4.0 is to domestic use for drinking, cooking, hygiene and sanitation needs, including livestock. The Court has also dealt with the submission made by the petitioner therein upon the National Water Policy of the year 2012 of the Government of India. Para 7 of the said order reads thus :

"7. The petitioner in person has also relied upon the National Water Policy of the year 2012 of the Government of India. Clause 1.3 thereof reads thus:

"1.3 Public policies on water resources need to be governed by certain basic principles, so that there is some commonality in approaches in dealing with planning, development and management of water resources. These basic principles are:

(i) Planning, development and management of water resources need to be governed by common integrated perspective considering local, regional, State and national context, having an environmentally sound basis, keeping in view the human, social and economic needs.

(ii) Principle of equity and social justice must inform use and allocation of water.

(iii) Good governance through transparent informed decision making is crucial to the objectives of equity, social justice and sustainability. Meaningful intensive participation, transparency and accountability should guide decision making and regulation of water resources.

(iii) Water needs to be managed as a common pool community resource held, by the State, under public trust doctrine to achieve food security, support livelihood, and ensure equitable and sustainable development for all. (v) Water is essential for sustenance of ecosystem, and therefore, minimum ecological needs should be given due consideration.

(iv) Safe Water for drinking and sanitation should be considered as preemptive needs, followed by high priority allocation for other basic domestic needs (including needs of animals), achieving food security, supporting sustenance agriculture and minimum ecosystem needs. Available water, after meeting the above needs, should be allocated in a manner to promote its conservation and efficient use.

(v)"

(emphasis added)

24. Therefore, after considering the National Water Policy of the year 2012, the Division bench recorded conclusion that from the water policies of both the Central and State Government, it appears that the use of water for drinking is

given the highest priority.

25. While considering the grave scarcity of water in entire State, in para 9 of the order, the Division Bench has further observed that :

"9. It cannot be disputed that there is a grave scarcity of water in the entire State. Prima facie, we are of the view that releasing water from Gangapur Dam only for "Shahi Snan" will be contrary to the Water Policy of the State as well as the Union of India. It will defeat the fundamental right of citizens under Article 21 of the Constitution of India of the right to access to clean water. As held by the Apex Court, the State under Article 21 of the Constitution of India is under an obligation to provide clean drinking water to its citizens."

26. The said P.I.L. was again heard on 22nd September, 2015 when the Division Bench at Principal Seat retrained the State Government from releasing the water from Grangapur dam only for the purposes of facilitating "Snans" or "holy baths" in Kumbhmela without seeking leave of the Court. It is observed by the Court that the action of releasing the water from Gangapur dam only for "Shahi Snan" is completely contrary to the water policy of the State. Thus, the State Government was insensitive to the needs of common people in drought affected areas of the State who have to travel long distance every day to fetch drinking water. Even in the said P.I.L. the Chief Secretary was directed to cause inquiry into the legality and validity of the decision taken to release the water from Gangapur dam only for the purposes of facilitating `Shahi Snan".

27. The Division Bench at Principal Seat, also entertained the P.I.L. No. 33/2016, wherein the petitioners sought direction to Respondent Nos. 1 to 3 to take appropriate steps and follow the procedure established under the Maharashtra Water Resources Regulatory Authority Act, 2005 and other consequential reliefs. The Court dealt with the submissions of the petitioners that almost 60 Lakh liters of water was being used for maintaining cricket pitches in Mumbai, Pune and Nagpur. The Court recorded submission of the petitioners therein that the State of Maharashtra is going through a worse kind of drought and is facing acute water shortage as the level of water in Dams is depleted to a considerable extent and in Marathwada most of the lakes have dried up and dam water also is not available since the last year. It would be gainful to reproduce hereinbelow the observations made in paragraph No.17 of the order dated 13th April, 2015, which reads thus :

"17. There is no manner of doubt that various reports which have been placed before us by the State Government and which have appeared in the news-papers and Media and the facts and figures which have been mentioned by the Intervenor Dr. Sanjay Lakhe Patil in his affidavit and additional affidavit clearly indicate that in the State of Maharashtra and more particularly most of the Districts of Marathwada and Vidarbha and some of the other Districts in Maharashtra are facing severe drought as there is scarcity of water. Situation in some of the parts of Marathwada is very acute and not a drop of water is

available even for the purpose of drinking or for sanitation. Reports which have been brought to our notice, indicate that all dams in Latur District have dried up and water is being supplied through wagons and tankers. Same is the condition in the Districts of Aurangabad and Osmanabad."

28. The Court proceeded to frame the questions and then in para 22, it is observed thus:

"22. In our humble view, this Court cannot lose sight of the fact of plight of millions of people in the State of Maharashtra who are facing acute scarcity of water. It has been brought on record that animals, cattle and people are dying as a result of scarcity of water in some of the Districts and particularly in District Latur, water is being supplied twice in a month and even non-potable water is not available. Same is the condition even in Cities which are just next to Mumbai viz. Thane and Kalyan. Even the City of Pune is facing acute shortage of water. This Court, therefore, cannot act as a mute spectator and ignore the plight of the millions of people in the State of Maharashtra. It is no doubt true that merely shifting of the Venue of IPL matches alone would not solve the problem. But, in our view, this could be the beginning, so that water which is used for maintaining the cricket pitches, if it is diverted to the drought affected areas, to a large extent the problem can be solved."

29. Ultimately, the Division Bench came to the conclusion as under :

"26. Taking an over all view of the matter, we feel that, at the most, Respondent Nos. 6 to 9 may suffer financial losses if they are asked to shift their Venue to the adjoining States. However, the harm which would be caused to the people at large if they are allowed to continue to hold their matches in State of Maharashtra is irreparable. Apart from suffering any financial loss, it is a question of realizing sensitivity of the issue and hardship which is being faced by all the citizens of this State. In such a case, we would have expected Respondent Nos. 6 to 9 to have on their own come forward and shift the Venue from the Maharashtra to other States. However, despite several opportunities being given to them, no such decision unfortunately has been taken by Respondent No.6 and the other concerned Respondents. We have, therefore, no other option but to interfere in the matter and give directions to Respondent Nos. 6 to 9 to shift the Venue of IPL, 2016 matches from 30th April, 2016 onwards to other States. We propose to give 15 days" time to them, so that during this time they can make their arrangements for shifting the Venue to other States. Respondent Nos. 6 to 9 also had given offer that they would supply water which was otherwise to be used by them for maintenance of cricket pitches to the Villages which are nominated by the Chief Minister or by this Court. We are afraid that it will not be possible for this Court and the State Government to keep monitoring such supply of water by Respondent Nos. 6 to 9 and we therefore cannot accept the aforesaid offer and we direct Respondent Nos. 6 to 9 to shift Venue of IPL, 2016 matches which are to be held from 30th April, 2016 onwards to the other States."

30. In the present petition, upon perusal of the affidavit-in-reply filed by Manohar Kisan Pokale, Superintending Engineer and Administrator, Command Area Development Authority, Aurangabad on 18th April, 2016, it appears that the District Collector, Aurangabad has taken a decision to reduce 10% of water supply for industrial purpose and 20% for the industries manufacturing Beer, Liquor and Breweries. The said decision has been taken in the meeting dated 16th April, 2016, after taking into consideration the storage of the water, requirements and keeping in view the acute drought situation. In the additional affidavit in reply filed by the same Officer on 22nd April, 2016, it is stated that after discussion with the representatives of the Industries, they have shown willingness to curtail their water supply by 5% periodically (i.e. fortnightly), which goes upto 45% including supply of 30% water already curtailed to the liquor industries.

31. Keeping in view the discussion in foregoing paragraphs and acute scarcity of water and drought situation in the territorial jurisdiction of this bench, this Court is of the opinion that drinking water to the citizens needs to be given top priority by reducing supply of water for production of Beer, Liquor, other Breweries and also to other industries.

32. It is the contention of the learned counsel appearing for the intervenors and that of the learned Government Pleader that 10% of water supply has already been cut that was meant for industrial purpose in the previous year. Therefore, the 20% curtailment of water supply declared recently should be treated in addition to 10% of cut that has been declared in the previous year and the total cut should be taken to be 30% in water supply. We are not inclined to accept this contention. Whatever cut has been applied to the water supplied for industrial purposes in the previous year cannot be considered in this year considering the current situation and the dire need of drinking water for the citizens as well as the livestock.

33. The contention of the learned counsel appearing for the intervenors that if the water supply meant for the industrial purpose is further curtailed, the industries of the intervenors would have to be closed, which would result in depriving about 15000 employees of their only source of livelihood, also has no substance. We are not going to direct the Government to block water supply of the industries completely. Moreover, some of the industries have their own sources of water on which they would continue their production. It may be noted that the industries can maintain their employees for a short period of time until rainfall and water is made available for drinking purposes through natural sources. Moreover, the employees can be given some other work during the next 40 days even if the production is reduced for insufficient water. In any case, priority will have to be given to the water for drinking purpose.

34. While justifying fortnightly cut of 5% of the water supply meant for breweries and distilleries, the learned Government Pleader submits that breweries and distilleries have process cycle of 15 days, hence reduction of water supply is

recommended every 15 days. He submits that the water cut should be made applicable periodically, as suggested. In our view, it would be difficult to consider the starting point of cycles of respective breweries and distilleries where there might be multiple units. It is likely that in some of the breweries and distilleries, the period of cycle might have commenced in the last fortnight and would be nearing the end of the cycle. Therefore, there is no point in waiting for the next 15 days for applying cut to the supply of water meant for these industries. We are not going to apply 100% cut of water supply meant for the said industries. Therefore, the said industries can use the available water supply to complete the cycles of some of their units by keeping the other units closed where cycles have come to an end. In that event there would be no adverse effect on the production of the said industries as also availability of employment therein.

35. Considering the need of the industries of breweries, distilleries and other related industries as well as the problem of employment likely to be faced by the workers therein, on one hand and the dire need of water of the citizens as well as livestock for drinking purposes on the other, we are of the view that a balance has to be struck in the matter of supply of water for drinking as well as industrial purposes. We do not wish to paralyze the industries by applying cut to the water supplied for running the same to the extent, the learned counsel appearing for the petitioner has claimed. However, we are inclined to reduce the quantity of water supplied to the said industries to a considerable extent, so as to enable the Government to make the water saved therefrom available for drinking purpose and also to keep the industries functioning. We expect that the Government would maintain parity in distributing the drinking water to the cities and villages.

36. The contention of the learned counsel for the petitioner that the water stored by some of the industries in their respective reservoirs should be made available for drinking purpose, cannot be considered at this stage. However, if the need be, the concerned District Administration may requisition the said reservoirs for providing the water for drinking purpose. We make it clear that the industries maintaining such reservoirs should not be supplied water in addition to what has been directed by us in the operative part of this judgment.

37. In the light of the discussion in the foregoing paragraphs, by way of interim measures, we issue the following directions to the State Administration [Aurangabad]:

1) In addition to 20% reduction in water supply with effect from 16th April, 2016 by the Local State Administration to the breweries/ distilleries/Liquor Industries, further water supply shall be reduced in the following manner:

a) 30% reduction with effect from 27th April, 2016 (i.e. 20% + 30% = 50% in total).

b) 40% reduction with effect from 10th May, 2016 (i.e. 20% + 40% = 60% in total).

2) So far as all other Industries in Aurangabad District, excluding mentioned in clause (1) as above are concerned, in addition to the decision taken by the Local State Administration to reduce / cut 10% water supply, further water supply shall be reduced / cut in the following manner.

a) 10% reduction with effect from 27th April, 2016 (i.e. 10% + 10% = 20% in total).

b) 15% reduction with effect from 10th May, 2016 (i.e. 10% + 15% = 25% in total).

3) So far as breweries / distilleries and liquor Industries situated in other Districts, within territorial jurisdiction of this Bench, except Aurangabad district are concerned, in case there is water supply by MIDC / State Government / Local Body, the same shall be reduced, if it is not already reduced in the month of March/April, 2016, in the following manner:

a) 50% reduction with effect from 27th April, 2016.

b) 60% reduction with effect from 10th May, 2016.

However, in case the authorities have already reduced / cut the water supply in the month of March / April, 2016, in the aforesaid area, while calculating 50% or 60% of reduction of water supply, as the case may be, it shall be deducted from the abovestated percentage of reduction of water supply.

4) So far as all other Industries, excluding the area of Aurangabad district, as mentioned in clause (3) hereinabove, situated / located in the territorial jurisdiction of this Bench of the High Court are concerned, there shall be reduction / cut in the following manner :

a) 20% of reduction with effect from 27th April, 2016.

b) 25% of reduction with effect from 10th May, 2016.

However, in case the authorities have already reduced / cut the water supply in the month of March / April, 2016, in the aforesaid area, while calculating 20% or 25% of reduction of water supply, as the case may be, it shall be deducted from the abovestated percentage of reduction of water supply.

5) The State Administration and its agencies/machinery are directed to scrupulously follow the interim directions hereinabove. The Collectors of the concerned Districts shall monitor the implementation of this order and send reports weekly showing the compliance of this order to the Registrar [Judicial] of the High Court Bench at Aurangabad and also to the office of the Government Pleader at Aurangabad. The week for compliance report shall commence from 27th April, 2016.

6) Water which is already saved or which will be saved because of reduction in water supply, as indicated above, shall be utilized by the State Administration for drinking purpose throughout the Marathwada Region and other Districts within

territorial jurisdiction of this Bench, depending upon the urgent need / requirement of drinking water to the citizens / animals / birds etc. The concerned Divisional Commissioner (Revenue), on receiving the report from the District Administration about acute scarcity of water in particular area of the said District, shall take the decision at his level and divert the supply of water to the said area accordingly. He shall submit the report to the Registrar (Judicial) showing the quantity of water saved and utilized. Such report shall be submitted every week henceforth.

7) The aforementioned directions shall remain in force till 10th June, 2016.

8) We make it clear that these interim directions are issued keeping in view the current severe drought situation and acute scarcity of water since the reports have been received from various parts of the State about deaths of human beings or animals or birds due to non availability of drinking water.

38. Interim directions issued by us today, cannot be construed as an impediment to the State Administration, if it wants to further reduce / cut water supply to the Industries depending upon circumstances / situation that may arise in near future.

39. The learned Government Pleader assures this Court that he will ensure that the copy of this order would be sent to all the State Functionaries, who are directly / indirectly concerned/ related with enforcement of interim directions, by way of fastest mode of communication i.e. fax / email, etc.

40. Hearing of this PIL is deferred. Stand over to 10th June, 2016.

41. The parties shall act upon an authenticated copy of this order.