

(2013) 05 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No. 6549 of 2012

Zawar Sales Limited

APPELLANT

Vs

Maharashtra Industrial Development Corporation and The
State of Maharashtra

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Citation : (2013) 3 ABR 1342 : (2013) 4 ALLMR 662 : (2013) 4 BomCR 568 :
(2013) 4 MhLj 585

Hon'ble Judges : V.M. Kanade, J;F.M. Reis, J

Bench : Division Bench

Advocate : A.V. Anturkar instructed by Mr. R.S. Datar, for the Appellant; P.P. Chavan instructed by Mr. Navdeep Virat for Respondent No. 1 and Ms. S.S. Bhende AGP, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—Heard learned counsel for the Petitioner and learned Counsel for the Respondents. The above Petition inter alia seeks for a Writ of Mandamus or a Writ in the nature of Mandamus directing the Respondent no. 1 to properly adjudicate and calculate the water charges to be levied and collected from the Petitioner for the period from May 2005 to May, 2012 as per the details and information submitted by the Petitioner to the Respondent no. 1.

2. Brief facts as stated by the Petitioner are that the Petitioner is running a small scale industry and is engaged in the business of manufacturing. The Respondent no. 1 is the only authority from whom water supply can be obtained by the Petitioner for the said activity. It is further the contention of the Petitioner that the Respondent no. 1 was charging Rs. 16.50 per cubic mt. for the supply of water but therein the sum was increased to Rs. 51.10 per cubic mt. without any rhyme or reason. The Petitioner thereafter entered into correspondence with the Respondent no. 1 for reconsideration of the said rate of water charges but however, the Respondent no. 1 on 7.5.2006 issued a bill for the arrears of the

water charges and demanded the difference in the amount of water charges from June 2005 up to the said date. The Petitioner thereafter filed a Writ Petition bearing No. 1903 of 2006 before this Court which was disposed of on 4.11.2009 in terms of an order passed by the Aurangabad Bench of this Court in Writ Petition No. 426 of 2005. This Court inter alia directed the Respondent no. 1 to decide the representation made by the Petitioner taking into consideration the water consumed as raw material and water used for allied activities. Thereafter the Respondent no. 1 called upon the Petitioner to furnish the details which were supplied on 16.1.2010. The Respondent no. 1 according to the Petitioner did not decide the said representation inspite of furnishing the said details and instead kept on raising bills including delayed payment charges. It is further the contention of the Petitioner that the Respondent no. 1 has not decided the said representation made by the Petitioner seeking review of water charges as directed by this Court. But on the contrary the Respondent no. 1 is raising bills claiming delayed payment charges and as such a Writ Petition bearing No. 4210 of 2011 was filed before this Court seeking a direction to the Respondent no. 1 to adjudicate and calculate the water charges to be levied and collected from the Petitioner for the period from 2004 to 2008 as per the details and information furnished by the Petitioner. This Court disposed of the said Writ Petition directing the Respondent No. 1 to decide the representation within two weeks in accordance with law. Subsequently, it appears that the Respondent no. 1 sought extension of time which came to be granted by this Court in Civil Application No. 1676 of 2011. It is further the claim of the Petitioner that the Respondent no. 1 ignored the orders passed in the said Writ Petition and issued a letter fixing the rate of water charges. The Petitioner thereafter raised a grievance with the Respondent no. 1 to the effect that the communication dated 7.10.2011 did not mention the quantum of water charges towards allied activities and the water charges used as raw material. The Petitioner also reminded the Respondent no. 1 that the Petitioner had closed its unit since 18.10.2010. It is further the contention of the Petitioner that they showed their willingness to deposit 25 % of the amount of water charges. It is further contention of the Petitioner that last bill annexed by the Respondent no. 1 dated May, 2012 is for a sum of Rs. 73,58,918/- which included the disputed amount of water charges, delayed payment charges additional charges and additional delayed payment charges. It is further contention of the Petitioner that the Respondent no. 1 did not act upon the information furnished by the Petitioner pursuant to the directions given by this Court in the order dated 4.11.2009. It is further their contention that considering the attitude of the Respondent no. 1 of having not decided the representation in accordance with the directions issued by this Court in the Petition filed by the Petitioner is illegal. It is the further the contention of the Petitioner that the Respondent no. 1 cannot be permitted to take advantage of its own wrong considering the delay in taking the decision by the Respondent no. 1 on the representation of the Petitioner. It is further the contention of the Petitioner that as per the calculation of the Petitioner the net disputed water charges comes to Rs. 40,78,140/- and that the Petitioner has shown their

willingness to pay 25% of the said amount. It is the further contention of the Petitioner that action of the Respondent no. 1 in not deciding the representation as directed by this Court is not only illegal, but contemptuous and consequently the Petitioner has no other remedy than to file the present Petition seeking the aforesaid reliefs.

3. The Respondent no. 1 has filed their Affidavit-in-Reply disputing the claims raised by the Petitioner. It is the contention of the Respondent no. 1 that the above Petition is misconceived and deserves to be dismissed at the threshold. It is further their case that water supply given by the Respondent no. 1 is supplied in terms of the Resolution dt. 12.9.2001 and it has increased/revised the water rates are with retrospective effect from 1.9.2001. It is further their case that subsequently the Respondent no. 1 also revised the rates vide Circular dated 31.10.2001. It is further their case that in view of the representations made by the Industries as well as by Industrial Associations against revision, the Respondent no. 2 revised the rates vide Government Resolution dated 28.11.2002 with effect from 1.9.2001. Consequently, the Respondent no. 1 by a Circular dated 27.5.2003 revised their policy and rate of water supply given to the industries which was made applicable from 1.6.2003. Subsequently, by a Circular dated 18.5.2005 the Respondent no. 1 revised the water charges for industries which used water as raw material which was brought into force from 1.11.2001. In the said Circular guidelines were also issued about the manner in which arrears were to be recovered from the concerned Industries. It is further their case that subsequently the respondent no. 1 vide Government Resolution dated 24.7.2006 further increased/revised the water supply rate by 15% from 1.9.2006 and further proposed to revise the water supply rate by 15 % per annum for the next four years from 1.4.2007. It is further contention of the Respondent no. 1 that in order to follow the guidelines issued by this Court, an internal committee under the Chairmanship of its Chief Engineer and consisting of various Engineers, appointed National Environmental Engineering Research Institute (for short "NEERI") for evaluation and benchmarking of water requirement during manufacturing of soft-drinks, Mineral Water Beverages and liquor. Thereafter, the said Committee completed the study of consumers who were using water as raw material for the manufacture of beverages and liquor and mineral water and submitted their Final Report which was accepted by the Respondent no. 1. It is further their case that considering the report of "NEERI" the Respondent no. 1 being the manufacturer of mineral water used 85% of water as raw material for manufacturing and 15% of water used for other than manufacturing purpose. It is further their contention in the Affidavit of the Respondent no. 1 considered the representations of the Petitioner on the basis of "NEERI" Report and calculated the water bill by applying the formula as mentioned in para 18 of the Affidavit. It is further their case that on the basis of the Final Report of "NEERI" the Respondent no. 1 has levied water charges on the Petitioner. It is further their case that the Petitioner had also by their letter dated 13.12.2011 informed the MIDC that they had closed their production from

September, 2010 and requested to charge the water bills at normal industrial rates. It is further their contention that the request was considered by the Respondent no. 1 and they waived a sum of Rs. 9,38,256/- being charged as additional water rate for non procurement of CETP membership and further from September 2010 has charged water charges at normal industrial rates and accordingly vide their letter dated 23.8.2012 the Petitioner was informed accordingly and a revised water bill for the month of July 2012 was furnished to the Petitioner. In the Additional affidavit in Reply filed by Respondent no. 1 in view of the amendment of the Petition by the Petitioner, stating that the revised water charges for the month of August 2012 was furnished to the Petitioner on the basis of the representations made by the Petitioner to the Respondent no. 1 and on the basis of the guidelines issued by this Court. It is further their contention that though water charges were revised the Petitioner used to deposit the water charges at the old rates and as such the Respondent no. 1 has issued an arrears of water bills on 1.3.2006 for the period from May 2005 to June 2006 which included delayed payment charges. It is further submitted by the Respondent no. 1 that by circular dated 7.10.2011 they were directed to issue a revised water bills for industries which used water as raw material for the period from 1.11.2001 to 31.5.2007 as per the "NEERI" Report. It is further their case that under Regulation 37 of the Water Supply Regulation, 1973 if the consumer disputed the contents of the bills he shall have to pay the bill under protest and then lodge a complaint. It is further their case that under Regulation No. 36 of Water Supply Regulation 1973 they are entitled to charge interest at 18% p.a. on the failure on the part of the consumer to pay the amount of the bill within 15 days from its presentation. It is further their case that as the Petitioner has not deposited the amount as per the revised rates but at old rates they are liable to pay the said delayed payment charges.

4. Learned counsel for the Petitioner has pointed out that the Respondent no. 1 has failed to comply with the directions of this court to consider the representations and as such the Respondent no. 1 are not justified to raise the demands as claimed by the bills issued to the Petitioner. The learned counsel further points out that it was incumbent upon the Respondent no. 1 to work out the calculations in terms of Exhibit V submitted by the Petitioner in compliance with the directions given by this Court. The learned Counsel thereafter submitted that in the earlier Writ Petition filed by the Petitioner this Court had directed the Respondent no. 1 to consider the representation of the Petitioner to calculate the water charges on the basis of the user of such water as raw material and for allied purposes. The learned counsel further points out that without considering the material and the information submitted by the Petitioner the Respondent no. 1 has erroneously raised the bills claiming the amounts from the Petitioner. The learned counsel further submits that during the pendency of the above petition, the Respondent no. 1 served a letter dated 27.8.2012 on the Petitioner considering only two aspects raised by the Petitioner in the representation. The learned counsel further submits that the Respondent no. 1 has also erroneously

raised bill at Exhibit H claiming water charges from October 2003 to July 2012 together with arrears, delayed payment charges etc. The learned counsel further submitted that the delay in deciding the representation was on account of negligence on the part of Respondent no. 1 and as such the question of claiming any delayed payment charges from the Petitioner would not arise. The learned counsel further submits that the amount of water charges have been illegally increased by the Respondent no. 1. He further submitted that the Respondent no. 1 is not entitled to levy or claim any amount on account of delayed payment charges and other additional charges from the Petitioner as according to him the delay was not on account of any default on the part of the Petitioner. The learned Counsel further pointed out that the Petitioner has also been amended to set aside the claim of the Respondent no. 1 towards the delayed payment charges and other additional charges from the Petitioner. The learned counsel for the Petitioner has taken us to the water bills as well as the correspondence addressed by the Respondent no. 1 to the Petitioner and submitted that the said amount claimed by the Respondent no. 1 are totally illegal, arbitrary and without any application of mind and not considering the directions of this court whilst disposing of the earlier Writ Petition. He further pointed out that the initial amount claimed by the Respondent no. 1 and the amount now claimed by the Respondent no. 1 is highly exorbitant and cannot be justified in law. The learned counsel as such submitted that the impugned demand of the amounts made by Respondent no. 1 deserves to be set aside.

5. On the other hand, learned counsel appearing for the Respondents has submitted that the demand made by the Respondent no. 1 is in accordance with the directions of this Court and in fact it has been fixed on the basis of the Report which has been accepted by the Respondent no. 1. The learned counsel further submitted that as per the terms of the Agreement executed between the Petitioner and the Respondent no. 1 there is a specific term to the effect that the Respondent no. 1 is entitled to claim delayed payment charges at 18% p.a. and as such this Court cannot interfere with the said claim put forward by the Respondent no. 1 in a writ petition. The learned counsel further pointed out that the Regulation also provided that in case of dispute of the amount claimed, it was incumbent upon the Petitioner to pay the amount claimed, under protest and thereafter raise objections to the said amount. The learned counsel further pointed out that the Petitioner has not deposited the said amount nor made any attempt to pay the said amount and as such the contention of the learned counsel for the Petitioner to the effect that the Respondent no. 1 is not entitled to claim the delayed payment charges is totally misconceived. The learned counsel pointed out that the right of the Respondent no. 1 to recover the said amount cannot be faulted and as such the question of any interference of this court in the present Writ petition would not arise. The learned counsel further points out that while disposing of the earlier Writ Petition this court has only directed the Respondent no. 1 to decide the representation and bifurcate the consumption of water by ascertaining the quantum of water consumed as raw

material and what amount is consumed towards allied activities. The learned counsel further pointed out that the Respondents have filed their Affidavit which clearly disclosed the fact that the amount which has been claimed is in compliance with the directions of this Court. The learned Counsel further pointed out that there is no merit in the above Writ Petition and as such the same deserves to be rejected.

6. We have carefully considered the submissions of the learned Counsel for the Petitioner and the learned Counsel for the Respondents. We have also gone through the relevant records.

7. The main contention of the learned Counsel appearing for the Petitioner is that the Respondent no. 1 is not entitled to levy delayed charges and other additional amounts as claimed in the bills claiming water charges as according to them delay in such payment is attributed solely to the Respondent no. 1.

8. With regard to the said contention, it would be appropriate to note Clause 35 of the Water Supply Agreement which states thus:

35. "Bills for water charges: The bills on account of water charges, as far as possible will be presented in the first week of every month for the water consumed in the proceeding month. The consumer shall pay the bill in full within 15 days from the date of issue of the bill to the Executive Engineer. The payment of bills shall not be withheld on any account.

Clause 36 of the said Agreement which deals with the failure to pay bills provides thus:

36. "Failure to pay bills: In case on failure on the part of the consumer to pay his bill within 15 days from the date of its presentation, interest at 18% per annum shall be charged to him from the 16th day onwards up to a further period of one month. If the consumer fails to pay the bill along with the interest payable within a grace period of one month stated herein above, water connection shall be served.

9. On a plain reading of the terms of the said Agreement, it clearly provided that it is incumbent upon the Petitioner to pay the full amount of water charges as claimed by the Respondent no. 1. The Agreement further contemplates that in case of failure to pay the amount within the specified period, then the Respondent no. 1 is entitled to claim delayed charges at 18% p.a.

10. At this stage, it would also be appropriate to note that the Respondent no. 1 in their Additional Affidavit have pointed out that Regulation 36 of Water Supply Regulation, 1973 also provides for charging of interest at 18% p.a. on failure on the part of the consumer to pay the bill within 15 days from its presentation. The Respondents have also stated that Regulation No. 37 of the said Regulation of 1973 further contemplates that if a consumer disputes the contents of the bill, he shall have to pay the bill amount under protest and then lodge a complaint.

11. In the present case, it is not in dispute that the Petitioner failed to pay the amounts as demanded by the Respondent no. 1 towards the water charges. In view of the said failure right of the Respondent no. 1 to claim the additional amount on account of delayed payment cannot be disputed. The Petitioner has also not disputed the said Regulation or the terms in the present Petition. Hence, in view of the said terms of the Agreement read with the said Regulation of 1973, we find that the Respondent no. 1 is entitled to claims such delayed charges from the Petitioners on account of their failure in paying the amounts when demanded.

12. With regard to the contention of the learned Counsel appearing for the Petitioner that the delay is attributed to the Respondent no. 1 we find that the Petitioners had earlier filed a Writ Petition before this Court being Writ Petition No. 1903 of 2006 which came to be disposed of by an order dated 4.11.2009. While disposing of the said Writ Petition this Court has observed that it will be open to the Petitioners to submit the documentary evidence before the Respondent no. 1 showing the water which they were using as raw material and water which they were using for allied activities. The Respondents were thereafter asked to complete the entire exercise within a specific period of time. This Court had further directed that after such information was provided by the Petitioners, the Respondent no. 1 was asked to charge the Petitioners in terms of the directions issued by this Court in Writ Petition bearing No. 4263 of 2005. The Petitioners were also given liberty to make a representation in respect of the water rates effected from 2002 onwards and the Respondents were called upon to take an appropriate decision on the said representation. The said directions were given relying upon the Judgment of the Division Bench passed in Writ Petition No. 4263 of 2005 dated 27.8.2008 in the case of Waluj Industries Association & Ors. Vs. State of Maharashtra. It would be appropriate to note that this Court while disposing of the Writ Petition in Waluj Industries Association (supra) has clearly observed that this Court declines to quash the notice issued by the Respondent no. 1 and the Petition came to be disposed of and the following directions were given:

(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.

13. On going through the said Judgments passed by this Court it clearly manifests that this Court declined to quash the notices of demand towards the water charges. This Court further held that the Respondent no. 1 was entitled to claim water charges at revised rates. But, however the directions were given with regard to fixing the rates on account of water used for manufacturing purposes as raw material and water used for allied activities.

14. Considering the said observations of this Court, we find that as the notices for demand of water charges were not quashed by this court, the contention of learned Counsel appearing for the Petitioner that delay is to be attributed to the Respondent no. 1 cannot be accepted as the demand was still in operation. It was incumbent upon the Petitioner to pay the amount in terms of the Agreement between the parties and Regulations referred to herein above under protest. Hence the action to issue the impugned bills by the Respondent no. 1 cannot be said to be arbitrary or illegal.

15. With regard to the contention of the learned Counsel that guidelines issued by this Court while disposing of the said Writ Petitions have not been followed by the Respondent no. 1, we find that on a perusal of the Affidavit of the Respondent no. 1 there is a specific averment that an Expert Committee was appointed NEERI to look into the said aspect and they had given a Final Report with that regard. Such Final Report was accepted by the Respondent no. 1 and in terms of such report a revised demand of water charges was issued to the Petitioner considering the amount of water used as raw material and allied activities. Hence, the said contention of the learned Counsel cannot be accepted.

16. With regard to the grievance of the Petitioners that exorbitant water charges are claimed from the Petitioner by the Respondent no. 1 the same cannot be considered by this Court in the present Petition as this Court while disposing of the Writ Petition in Waluj Industries Association (supra) has clearly observed that the Respondent no. 1 was entitled to claim water charges at the revised rates. Hence, the said contention is rejected. This action of the Respondent no. 1 to increase the water charges has also been accepted by the Apex Court in the Judgment reported in Pepsico India Holding Pvt. Ltd. Vs. State of Maharashtra and Others, . Considering the facts and circumstances of the case, and having noted the fact that the Agreement between the parties itself gives a right to the Respondent no. 1 to claim delayed water charges and the learned Counsel appearing for the Petitioner has failed to point out any material on record to suggest that the guidelines issued by this Court have not been complied with by the Respondent no. 1 we find that there is no case made out by the Petitioner which calls for any interference by this Court in the water charges demanded by Respondent no. 1. As the Respondent no. 1 was entitled to claim delayed charges at 18% p.a. which has been levied by the Respondent no. 1 we find that there is no reason for any interference in the demand of water charges by the Respondent no. 1. The action of the Respondent no. 1 cannot be said to be

arbitrary or contrary to provisions of law.

For the aforesaid reasons, we find no merit in the above Petition. The Petition stands accordingly rejected.