

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7933 OF 2015

Induri Farms Limited & Anr.

...

....Petitioners

V/S

State of Maharashtra & Ors.

....Respondents

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Mr. Darius B. Shroff, Senior Counsel, Mr. Medhaven Baxi, Mr. Ayush Agarwal and Mr. Montul Bajpai i/b M/s. Crawford Bayley & Co. for the Petitioners.

Mr. Sandip Babar, AGP for Respondent Nos.1 to 4/State.

Mr. Rajendra Ganpatrao Dhodapkar, Executive Engineer, Pune Irrigation Division, Pune, Mr. Ashok B. Late, Sub-Divisional Engineer, Khadakwasala Sub Division No.2, Pune and Mr. Ananta R. Hande, Sectional Engineer, Vadgaon Section, Pune, are present in Court today.

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**CORAM : A.A. SAYED &  
RIYAZ I. CHAGLA, JJ.**

DATE : 29 JANUARY 2019

**ORDER:**

1 The challenge in this Petition is to the order dated 16 December 2014 passed by the Respondent No.2-Superintending Engineer, Pune Irrigation Division, Pune. The operative part of the impugned order reads as follows:

“1. As per condition 8 of the agreement, the units for water consumption be ascertained at 1.25 times the sanctioned quota for the period from installation of the electronic meter of the company till the date of sealing (i.e. date 6.12.2007 to date 29.1.2010).

2 Since the water consumption sanctioned for the company Induri Farm Ltd. was mainly being used

unauthorizedly for the company Cadbury India Ltd., water tax should be recovered after estimating at the rate of 1.5 times on the above units of water consumption as per 1(b) in Govt. Res. dt. 23.12.2002.”

2 The issue in the Petition pertains to the water charges under the Agreement dated 1 June 2008 between the Petitioners and the State Government. The Petitioners were issued a show cause notice dated 18 February 2010 which reads as follows:

“As per the agreement executed between us for using Indrayani water for industrial purpose, you have been permitted to use 0.2552 water per year. The said agreement for six years and valid upto 31.5.2014. Electronic meter has been installed to count use of water.

On 29.1.2010, an executive of the Vadgaon Maval, Irrigation Dept. inspected the said electronic meter and found meter as faulty. In this regard he has given a notice on 29.1.2010. The Deputy Divisional Engineer, made a panchanama on 30.1.2010, when Mr. Tiwari, Mr. Kulkarni and Mr. Desai, of your company were present. During inspection it has found that one stabilizer has been affixed near meter, which controls the meter. That means, during intake of water you can control the meter yourself and switch on and switch off the meter as per your wish, which is amount of stealing of water. This is breach of our contract and therefore please show cause why your water permission should not be cancelled. Please submit

your reply within five days from the date of receipt of this letter, otherwise action for cancellation of permission will be initiated.”

3 By communication dated 4 March 2010 the Executive Engineer, Pune Irrigation Division, Pune, proposed to cancel the water permission and take penal action. After receipt of the said communication the Petitioners approached this Court by filing Writ Petition No.2492 of 2010. The Division Bench of this Court passed order dated 1 April 2010 in the said Writ Petition which reads as follows:

“1. The principal grievance of the Petitioners before us is that no breakup has been furnished to the Petitioners in respect of the amount demanded by the authorities in the sum of Rs.599.51 lakhs from the Petitioners. It is not in dispute that presently the Petitioners have rushed to this Court on the basis of the communication dated 23rd March 2010, in stead the Petitioners could have agitated the ground taken in this Petition which will be in the nature of factual controversy to be addressed by the Superintendent Engineer, Pune Irrigation Circle.

2. In the circumstances, we decline to examine the controversy on merits. In stead, we dispose of this Petition by directing the Respondents to furnish break-up of the amount demanded from the Petitioners in the sum of Rs.599.91 lakhs. That be done within one week from today. On receipt of that communication, it will be open for the Petitioners to approach

the Superintendent Engineer, Pune Irrigation Circle and submit their representation as may be advised. That will have to be done within one week from the receipt of the communication providing break up amount from the authorities. The Superintendent Engineer, in turn, shall consider and decide the representation made by the Petitioners as expeditiously as possible and in any case within a period of two weeks from the date of its receipt.

3. All questions in the said representation will have to be decided on its own merits and in accordance with law.

4. Till the said representation is finally decided and the decision communicated to the Petitioners thereon, no coercive steps be taken against the Petitioners.

5. Petition disposed of on the above terms."

4 Pursuant to the aforesaid order, the Petitioners were afforded a hearing by the Respondent No.2-Superintending Engineer, Pune Irrigation Division, Pune and the impugned order came to be passed on 16 December 2014.

5 An Affidavit-in-Reply has been filed in this Petition by the Sub Divisional Engineer on behalf of the Respondents. It is stated in the said Affidavit that a total of six hearings were conducted i.e. on 12 July 2010, 19 September 2011, 1 November 2011, 11 February 2013, 12 May 2014 and 23 June 2014 before the Respondent No.2 Superintending Engineer, Pune Irrigation Division, Pune. On perusal of the impugned order dated 16

December 2014 it is noticed that the Respondent No.2-Superintending Engineer has relied upon the Department Reports dated 14 August 2014 and 11 November 2014. The said reports were submitted to the Respondent No.2-Superintending Engineer after the date of the last hearing which was conducted on 23 June 2014. It is stated in the Affidavit-in-Reply that copies of the reports dated 14 August 2014 and 11 November 2014 were given to the Petitioners on 13 February 2015, which is subsequent in point of time not only to the last date of hearing i.e. 23 June 2014, but also to the impugned order dated 16 December 2014. The Petitioners have therefore not been granted an opportunity to contest the two reports dated 14 August 2014 and 11 November 2014. The impugned order dated 16 December 2014 clearly suffers from violation of principles of natural justice and cannot be sustained. Moreover, we find that the impugned order covers subject matter viz- alleged sale of water by the Petitioner and unauthorized use of the water consumption by the Cadbury India Ltd. in breach of the Agreement. The issue of alleged sale of water by the Petitioner and unauthorized use of the water consumption by Cadbury India Ltd. was not the subject matter in the show cause notice dated 18 February 2010. On this count also the impugned order cannot be sustained. Learned Senior Counsel for the Petitioners fairly agreed that if the Petitioners are granted a fresh hearing before the Respondent No.2-Superintending Engineer, the

amount which has been paid by the Petitioners under protest may be retained by Respondents till the matter is decided afresh. In view of the above, we pass the following order:

ORDER

- i) The matter is remitted back to the Respondent No.2 Superintending Engineer, Pune Irrigation Division, Pune.
- ii) Inasmuch as initial show cause notice does not cover the issue of alleged sale of water by the Petitioners and unauthorized consumption of water by Cadbury India Ltd., we grant liberty to the Respondents to issue a supplementary show cause notice, if such show cause notice is not already issued. Learned AGP, on instructions, states that such show cause notice has already been issued on 23 May 2016.
- iii) The Petitioners shall be heard on both show cause notices. The Petitioners are permitted to file Reply and/or Additional Reply to the show cause notices.
- iv) The Petitioners shall be granted an opportunity of hearing in respect of both the show cause notices and the Respondent No.2 Superintending Engineer, shall take a decision afresh on the show cause notices expeditiously and in any event by 30 June 2019.

- v) The amount already paid by the Petitioners to the Respondents under protest may be retained by them till the final decision on the show cause notices and the said amount shall be adjusted/refunded accordingly.

6 The Petition is disposed of in the aforesaid terms.

**(RIYAZ I. CHAGLA, J.)**

**(A.A. SAYED, J.)**

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