IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4313 OF 2004

Petitioner : BILT Graphic Paper Products Limited, a company registered under the Companies Act, 1913, having its Registered Office at Ballarpur, Tahsil and District Chandrapur, through its Deputy General Manager (Commercial), Shri B.K. Biswas, Resident Ballarpur.

– Versus –

Respondents :

1] The State of Maharashtra, through Secretary, Department of Irrigation, Mantralaya, Madam Cama Road, Mumbai : 400 032.

2] The Collector, Chandrapur, Tahsil and District Chandrapur.

3] Tahsildar, Ballarpur, Tahsil & District Chandrapur.

4] Executive Engineer, Chandrapur, Irrigation Division, Vidarbha Irrigation Development Corporation, Chandrapur.

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Mr. A.A. Naik, Advocate for the Petitioner.
Mr. C.S. Kaptan, Senior Advocate with Ms. N.P. Mehta, A.G.P. for Respondent Nos.1 to 3.
Mr. J.B. Kasat, Advocate for Respondent No.4.

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CORAM : **A.S.. CHANDURKAR & M.W. CHANDWANI, JJ.**
RESERVED ON : **3rd APRIL, 2023.**
PRONOUNCED ON : **4th MAY, 2023.**

J U D G M E N T : *(Per M.W. Chandwani, J.)*

The petitioner seeks to quash demand notices dated 16/07/1997, 16/07/2004 as 16/08/2004 and also the Government Resolution dated 28/11/2002.

02] The petitioner is a Company registered under the Companies Act, 2013 (hereinafter referred to the as 'the Company' for short) and engaged in manufacturing of paper at Ballarpur in the State of Maharashtra. It requires huge quantity of water for manufacturing the paper. On 31/07/1947, the company entered into an agreement with the then Government of Central Provinces and Berar for drawing water from Wardha river free of charge under Section 26 of the Central Provinces and Berar Irrigation Act, 1931 (hereinafter referred to as "the Act of 1931" for short). From 03/05/1962, the C.P. and Berar Regulation of Water Act, 1947 (hereinafter referred to as "the Act of 1947" for short) came into force. Under the provisions of the Act of 1947, the Government started recovering water charges from the Company from 01/06/1962 at the rate of Rs.4.50 per 10000 cubic feet of water drawn from Wardha river beyond the capacity of 9000 MT.

03] By notification dated 05/06/1972 and amended notification dated 10/06/1976 issued under Section 70 of the Maharashtra Land Revenue Code (hereinafter referred to as “the Code” for short) the Government of Maharashtra fixed the rate for the use of water for non-agricultural purpose.

04] On 14/03/1996 the Company received a letter along with a statement demanding difference between rate @ Rs.4.50 and the prevailing rates for the period from 01/01/1976 to 30/09/1995 totaling Rs.90,24,120/-. The Company objected on the ground that the rate of Rs.4.50 per 10000 cubic feet was a negotiable rate and could be not be modified unilaterally. The Company paid the amount of Rs.8,80,293/- as water charges from May, 1996 to April, 1997 under protest. Meanwhile, on 21/05/1997 another agreement came to be executed between the Company and the State of Maharashtra through respondent no.2. However, on 16/07/1997, a impugned demand notice was issued by respondent No.3 for Rs.1,28,20,932/- towards water arrears for the period from 1972-73 to 1996-97. The Company started payment of current water bill from 09/03/1998 onward at the revised rate of Rs.10/- per 10000 cubic feet under protest. Again on 16/07/2004, another impugned demand notice with revised rate of water charges claiming arrears from 01/07/2000 to 31/01/2004 came to be issued for Rs.5,35,26,339/- on the basis of rate prescribed by the State of Maharashtra in its Government Resolution dated 26/11/2002. Lastly, on 16/08/2004 impugned composite demand notice for Rs.6,63,47,273/- from 01/11/1968 to 31/05/2004 towards arrears of water charges was issued to the petitioner till these demand notices and Government Resolution dated 26/11/2002 are challenged in this writ petition.

05] Respondent Nos.2 and 3 filed its reply and submitted that the demand notice issued by respondent Nos.2 and 3 is correct and valid. It is contended that under Section 70 of the Code, Respondent No.1 has authority to levy the charges for the use of water from natural sources, which are as notified as canal for irrigation and non-irrigation purpose. It is contended that no special rates for use of water were fixed for the petitioner, therefore, the rates fixed by the Government Resolution dated 05/06/1972 and 10/06/1976 are applicable to the petitioner. The Government by Resolution dated 28/11/2002 revised the water charges. Therefore, the respondents started levying of the charges for the use of water as per the said resolution and also sought difference of water charges from the date by which the Government Resolution dated 05/06/1972, 10/06/1976 and 28/11/2002 was made applicable. According to the respondents, the impugned demand bills are properly issued and the petitioner is liable to pay the water charges as per the impugned demand.

06] Before proceeding to deal with the points raised in this petition, it is germane to note here that initially this writ petition along with connected writ petitions challenging the water charges levied by the respondents, were dismissed by this Court vide common order dated 11/01/2019. The petitioner herein assailed the said order of dismissal in Civil Appeal No.2596/2019 arising out of Special Leave Petition (C) No.6181 of 2019. The Supreme Court by its order dated 08/03/2019 set aside the order dated 11/01/2019 of this Court and the matter was remanded to this Court for fresh decision in accordance with law.

07] We have heard learned Counsel Mr. A.A. Naik appearing on behalf of the petitioner and learned Senior Counsel Mr. C.S. Kaptan appearing on behalf of respondent Nos.1 to 3, extensively. We have also perused the record of the case and gone through the relevant provisions of law relied by the respective parties.

08] The learned Counsel Mr. A. A. Naik appearing on behalf of the petitioner would submit that respondent No.1 is not authorized to charge the water under Section 70 of the Code by issuing impugned notification dated 05/06/1972 and 10/06/1976. Even if so, the case of the petitioner will not come under the sweep of the notification dated 05/06/1972 and 10/06/1976. The rates mentioned in these Government Resolutions are general rates applicable to other industries and not to the petitioner. The special/concessional rate for use of water was fixed for the petitioner by letter dated 28/09/1965 and which was reiterated in agreement dated 21/05/1997. In the wake of special rates fixed for the petitioner at the rate of Rs.4.50 per 10000 cubic feet beyond the capacity of manufacturing of 9000 MT of paper, the rates cannot be changed by respondent No.1, unilaterally. According to him, the impugned Government resolutions does not apply to the petitioner as rate was already fixed for the petitioner.

09] Next, Mr. Naik submitted that the rate for use of water was fixed by the Government of Maharashtra vide letter dated 08/01/1964 and 28/09/1965 under the provisions of the C.P. and Berar Water Regulation Act, 1949 (hereinafter referred to as "the Act of 1949" for short), which was replaced by the Maharashtra Irrigation Act, 1976 (hereinafter referred to as "the Act of 1976" for short). Section 131 of the Act of 1976 protects the rates already fixed under the Act of 1949. According to him rate for water use for the petitioner was governed by the provisions of Act of 1976. The respondent no.1 does not have authority to fix the rate for water use under section 70 of the Code, and therefore, the Government Resolutions dated 05/06/1972 and 10/06/1976 and notification dated 28/11/2002 are not applicable to the petitioner. Consequently, the impugned demand notice dated 16/07/1997, 16/07/2004 and 16/08/2004 are required to be quashed and set aside.

10] To buttress his contention, the learned counsel for the petitioner seeks to rely on the following directions:

I. ***Principal Chief Conservator of Forests and others vs. Yamthong Haokip – (2008) 17 SCC 645.***

II. ***Suresh Kumar Wadhwa vs. State of Madhya Pradesh AND OTHERS – (2017) 16 SCC 757.***

III. ***City Bank N.A. vs. Standard Chartered Bank and others – (2004) 1 SCC 12.***

IV. ***Bisra Stone Lime Company Ltd. and another vs. Orissa State Electricity Board and another – (1976) 2 SCC 167.***

The common thread running from these decisions is that when any rate is fixed by an agreement, the rate cannot be changed unilaterally, but it is to be fixed mutually.

11] Learned Senior Counsel Mr. C.S. Kaptan appearing on behalf of the respondents submitted the Act of 1947 merely declares that all the rights in water from natural source of supply shall vest in the Government and, hence, rate of Rs. 4.50/- per 10000 cubic feet was not fixed under the Act of 1947, but by the memorandum dated 27/09/1963 as an administrative instruction notifying that the water drawn from free flowing water source shall be charged at the rate of Rs.5.50 per 10000 cubic feet subject to revision from time to time. Thereafter, letter dated 08/01/1964 issued by the Government to the Collector, Chandrapur, whereby the decision of the Government to charge water at the concessional rate of Rs.4.50 uniformly to all the consumers including the petitioner is communicated. No rules for fixing the rate for water use were framed under the provisions of the Act of 1949, therefore, there is no question of fixing the rate under the provisions of the Act of 1949. Fixing of rate at Rs.4.50 was only the administrative act and not done in exercise of any statutory power. Since no rules were framed under Section 5 of the Act of 1949, it cannot be said that the rates were fixed under the Act of 1949 by an agreement. Therefore, Section 131 of the Act of 1976 will not come to rescue the petitioner. It is contended that on 01/07/1976, the Act of 1976 was brought into force and this Act is for supply of canal water from notified river. Wardha river where from water was being supplied to the petitioner was not notified river till then under the act of 1976, therefore the Act of 1976 will not be applicable to the petitioners.

12] The learned Senior Counsel for the respondents submitted that under Section 20 of the Code, all the rivers and natural flow of water vests in the Government and the Government can recover land revenue. Section 64 of the Code provides that all the lands are liable to pay revenue unless specifically exempted. Section 70 of the Code empowers the Government to fix water rates from time to time in respect of water that vests in the Government and in respect of which no rate is leviable under any law relating to irrigation in force in any part of the State. Therefore, the Government after commencement of the Code, issued Government Resolution dated 05/06/1972and 10/06/1976 fixing the water charges. Under Section 70 of the Code, the Collector can fix the water rates if the rates are not fixed by the Irrigation Department.

13] Lastly, the learned Senior Counsel appearing on behalf of the respondents submitted that by way of agreement dated 21/05/1997, upon which the petitioner is harping. He submits that Clause 4 of the agreement does not mention about any concessional or special rates fixed for the petitioner industry, because no such rates were ever fixed. By letter dated 08/01/1964, the rate of Rs.4.50 per 10000 cubic feet was general rate and was made applicable to all including the petitioner subject to revision from time to time. The notification dated 28/11/2002 prescribed new rate for use of water which has been upheld in the case of ***Pepsico India Holding Private Limited vs. State of Maharashtra and others – (2011) 9 SCC 79.*** According to the learned Senior Counsel, the impugned demand notices are valid and correct and, therefore, the petitioner is liable to pay the water charges as per the impugned demand notices. To buttress his submission, the learned Senior Counsel relied on the judicial pronouncement in the case of ***R.S. Rekhchand Mohota Spinning & Weaving Mills Ltd. vs. State of Maharashtra – (1997) 6 SCC 12.***

14] Before adverting the controversy between the parties, it would be appropriate to preface briefly tracing the development in the field of law relating to charges for the use of water for industrial purpose relevant for the purpose of answering the controversy between the parties.

15] Prior to the independence, the law relating to irrigation and use of water as well as its charges in Central Provinces was being governed by the Act of 1931. Post independence, the Act of 1949 came to be enacted on 17/06/1949. The Act of 1949 came into force from 01/06/1962. This Act was framed with intent to regulate the appropriation of water by all industrial concern or local authority for industrial purposes. By virtue of Section 3 of the said Act of 1949, the rights in the water of any natural source of supply vested in the crown. Restriction was made on the industrial concern to receive water for industrial purpose from any natural source of supply except in accordance with the rules made in this behalf. By Section 5, the Government was empowered to make rules in respect of fixation of rates for supply of water. After the reorganization of the States and the amalgamation of Central Provinces and Berar area in the State of Maharashtra, the Code came to be enacted. The Government was empowered to collect charges for use of water from natural sources. Section 70 of the Code empowers the Government to fix water rate from time to time in respect of water that vests in the Government and in respect of which no rate was fixed under any law relating to irrigation in force in any part of the State. Thereafter, the Act of 1976 came into force, whereby the Act of 1949 came to be repealed. The object of the Act of 1976 is to provide water charges of land under the irrigable command of canals and to provide the matters connected therewith. By this Act, the provisions were made for charging water rates from the canal notified under the Act of 1976. Thereafter also other Acts and Regulations came to be framed for fixing the rate of the water use, but those are not relevant for the deciding the controversy arose in the present petitions.

16] Indisputably, initially the petitioner was getting water by way of an agreement dated 31/07/1947 from Wardha river for industrial use of manufacturing of papers in its factory free of cost. From year 1964-65 respondent no.2 started charging Rs.4.50 per 10000 cubic feet beyond 9000 MT manufacturing capacity of its factory. The petitioner also started paying the water charges at this rate. Meanwhile, the Code came into force and respondent No.1 issued impugned Resolution dated 05/06/1972 and 10/06/1976, fixing the rates for the use of water for industrial purpose at the rate of Rs.8.00 per 10000 cubic feet for first two years and Rs.10/- for 3rd year onward. Thereafter, the rate was again revised by impugned government resolution dated 28.11.2002. The controversy started between the parties to the petition when respondent no.2 issued impugned bill on the basis of the impugned government resolutions. The bone of contention in the present petition is the applicability of the impugned Government resolutions to the petitioner.

17] At the outset, we may mention here that the impugned Government Resolution dated 28/11/2002, whereby the water charges were revised, was under challenge by way of a writ petition, the Supreme Court in the case of ***Pepsico India Holding Private Limited vs. State of Maharashtra and others –***

(2011) 9 SCC, has upheld the validity of said notification, therefore, we need not to delve upon validity of Government Resolution dated 28/11/2002.

18] Section 70 of the Code empowers the respondent no.1 to determine the rates for use of the water from river. The Supreme Court in ***Rekhchand Mohota Spinning & Weaving Mills Ltd.*** *(supra)* has held that the Government has power under Section 70 read with Section 20 of the Code to levy water cess on the use of water by the Resolution which came to be passed by the State Government determining the rate at which water cess is cessable on use of water for industrial purpose. It would accordingly be exigible from levy of tax. It is true that the appellant has been using the water for over 70 years but that cannot be construed to mean that it has a right to draw water by artificial contrivance from the following river for use in its factory for industrial purpose. Having used the water for industrial purpose, it is taxable as incidence on cess on water as land cess and, therefore, it is liable to pay water cess at the rates prescribed by the Government. Thus, we do not agree with Mr. Naik that the respondent No.1 cannot fix water charges under section 70 of the Code.

19] Next, learned Counsel Mr. Naik appearing on behalf of the petitioner vehemently submits that the Government Resolution dated

05/06/1972 and 10/06/1972 fixed the rate for the use of water where no rate is available under any law in force in any part of the State for non-agricultural purpose. According to him, since the Government of Maharashtra by way of notification dated 03/05/1962 brought the Act of 1949 and by way of Government Resolution dated 03/05/1962 fixed the water charges for the water use by the petitioner with effect from 01/06/1962. According to him, the rates were already fixed by the Government of Maharashtra, therefore, in the wake of specific mention in the Government Resolution of the year 1972 and 1976, those rates will be applicable, where no rates have been fixed by the Government of Maharashtra. Therefore, these Government Resolutions are not applicable to the petitioner. According to him, Therefore, even the Government Resolution dated 28/11/2002 is not applicable to the case of the petitioner, since the rates are already saved. Hence, accordingly the impugned demand notices issued by the respondents are required to be set aside.

20] The Government Resolution dated 05/06/1972 and 10/06/1976 specifically fixed the rates for the use of water for industrial purpose in respect of which, no rate is leviable under any law in force in any part of the State. It is a matter of record that by way of letters dated 08/01/1964 and 29/09/1965, the State Government has fixed the water charges at the rate of

Rs.4.50 per 10000 cubic feet beyond 9000 MT capacity with effect from 01/06/1962. Thus, on the date of issuance of Government Resolutions dated 05/06/1972 and 10/06/1976, the rates for the use of water charges to the petitioner was already fixed and the Government Resolutions of the year 1972 and 1976 saved those cases from charging the water rates mentioned in the said Government Resolutions, where the rates of use of water are already fixed. Therefore, respondent Nos.2 and 3 cannot charge the rates mentioned in the said Government Resolutions to the petitioner for the use of water at the rate of Rs.4.5 per 10000 cubic feet beyond the capacity of 9000 MT.

21] This takes us to the agreement dated 21/05/1997 executed between the petitioner and respondent No.2, wherein the parties to the agreement have agreed to fix the rate of water charges beyond the manufacturing capacity of 9000 MT, which will be the deciding factor for charging the water from the date of execution of this agreement. The said covenant is enumerated in Clause 4 of the agreement, which is reproduced as under:

> *"4. The company had entered into an agreement with the Government of Central Provinces and Berar on 1st July, 1947 shown in Annexure-I and letter issued b y Irrigation and Power Department, Government of*

> *Maharashtra dated 28/09/1965 shown in Annexure-II which provides for supply of water to the Paper Mill for manufacturing capacity of 9000 tonnes of paper, free of charge. Therefore, water to this extent will continue to be provided free of charge and the balance quantity for manufacture of paper will be charged as per the prevailing rate notified by the Government of Maharashtra or any Special Rate fixed for this industry i.e. Ballarpur Industrial Limited, Ballarpur. In this regard, the Company will submit to the Collector, Chandrapur, monthly returns as per Annexure-III giving the details of water consumption. The Collector will raise the bill on that basis, which will be paid by the Company regularly."*

22] Bare reading of this clause shows that the rate for use of quantity of water will be either as per the prevailing rate notified by the Government of Maharashtra or any special rates fixed for the petitioner. Taking help of this Clause, Mr. Naik, learned Counsel for the petitioner vehemently submits that the Government has agreed to charge special rate which was already fixed at the rate of Rs.4.50 per 10000 cubic feet and the respondents cannot charge on the ground that in view of the agreement. The submission of the learned Counsel for the petitioner appears to be misconstrued, because by Clause 4 of the agreement, the petitioner agreed to pay either at the prevailing rate notified by the Government of Maharashtra or any special rate fixed for the petitioner. Admittedly, after the execution of agreement dated 21/05/1997, no special rate for use of water was fixed for the petitioner. Therefore, the petitioner cannot say that Rs.4.50 per 10000 cubic feet is special rate fixed for it. Having agreed to pay water charges either at special rate or prevailing rate notified by the Government by agreement dated 21/05/1997, the petitioner now cannot say that the prevailing rate for use of water is not applicable to the petitioner. Thus, on the date of issuance of the Government Resolutions of 1972 and 1976, the petitioner were already paying water charges fixed by the Government of Maharashtra vide letter dated 28/09/1965, the impugned Government Resolutions were not applicable to the petitioner. However, by agreement dated 21/05/1997, the petitioner agreed to pay the water charges as per the prevailing rate notified by respondent. Therefore, from the date of agreement, the petitioner will be liable to pay the prevailing rate notified by respondent No.1. Therefore, the decisions in *Principal Chief Conservator of Forests; Suresh Kumar Wadhwa; City Bank* and *Bisra Stone Lime Company (supra)* relied by the petitioner will not be applicable here.

23] This takes us to sheet anchor argument of learned Counsel for the petitioner Mr. A.A. Naik. According to him, since the rate of Rs.4.50 per 10000 cubic feet has been fixed under the Act of 1949, which is repealed by the Act of 1976, and in view of Section 131 of the Act of 1976, the rates fixed under the old Act i.e. the Act of 1949 are saved. On this count also, the Government Resolutions dated 05/06/1972 and 10/06/1976 are not applicable.

24] Perusal of letter dated 08/01/1964 and 28/09/1965 of the respondent No.1 shows that the rate of Rs.4.50 per 10000 cubic feet beyond the capacity of manufacturing of 9000 MT of paper was fixed under the Act of 1949. No doubt the rules for levy of water charges under section 5 of the Act 1949 were not framed by the respondent no.1, but the fact remains the said rate was fixed by issuing memorandum by quoting that it had been fixed under the provisions of the Act of 1949, therefore, now it cannot be said that the said rate were not fixed under the Act of 1949.

25] Section 131 of the Act of the 1976 reads thus :

> *"131. On the commencement of this Act, the following Acts, that is to say—*
> *(i) the Bombay Irrigation Act, 1879,*
> *(ii) the central Provinces Irrigation Act, 1931,*
> *(iii) the Central Provinces and Berar Regulation of Waters Act, 1949,*
> *(iv) the Hyderabad Irrigation Act, 1357-F, and*

(v) the Hyderabad Irrigation (Betterment Contribution and Inclusion Fees) Act, 1952, are hereby repealed :

Provided that the repeal shall not affect—
(a) the previous operation of any law so repealed or anything duly done or suffered thereunder, or
(b) any right, privilege, obligation, or liability acquired, accrued or incurred under any law so repealed, or
(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed, or
(d) any investigation, proceeding, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, proceeding, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed :

Provided further that, subject to the preceding proviso, anything done or any action taken (including any charges created, appointments, rules, notifications, orders, summons, notices, warrants and proclamations made or issued, authorities and powers conferred or vested, record-of-rights prepared or revised, canals or any water works or water courses or field-channels constructed, any supply of water made, <u>water rates charged</u>, agreements or contracts made, any taxes or fees levied, any compensation *awarded, any labour obtained or supplied for emergency works of canals, any rights acquired or liabilities incurred, any suits instituted or proceeding taken or appeal made, and any Second Class Irrigation Works declared as such under any law so repealed) shall, in so far as such thing done or action taken is not inconsistent with the provision of this Act, be deemed to have been been done or taken under the corresponding provisions of this Act; and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act."*

26] Taking help of this Section the learned counsel for the petitioner submitted that in the wake of Section 131 of the Act of 1976, the Act of 1949 came to be repealed. While repealing, the rates fixed under the Act of 1949 were saved under the provisions of Section 131 of the Act of 1976. Therefore the rate of Rs.4.50 fixed under the provisions Act of 1949 is saved by the Section 131 of the Act and it is by way of Section 59 of the Act of 1976, the rate for use of water for industry can be fixed and not under Section 70 of the Code. The rate fixed by the impugned government resolution dated 05/06/1972and 10/06/1976 issued under section 70 of the Code will not be applicable to the petitioner.

27] It is pertinent to note here that for applicability of the Act of 1976 to supply of water from any river the notification under Section 11 of the Act of 1976 is required. By way of affidavit the respondents has come up with case that till then Wardha River where from the petitioner use to lift the water was not notified under the Act of the 1976. This contention is not controverted anywhere by the petitioner in rejoinder filed by it. Thus, though the Act of 1949 was repealed by the Act of 1976, but Wardha River was not notified then under the Act of 1976, therefore, at that relevant time the Act of 1976 was not applicable to Wardha River, where from the petitioner is taking water, therefore, there is no question of fixing the water rate under Section 59 of the Act of 1976 in respect of supply of water to the petitioner from Wardha River.

28] Upshot of the aforesaid discussion is that the petitioner was entitled to use of water beyond the manufacturing capacity of 9000 MT at the rate of Rs.4.50 per 10000 cubic feet which was fixed by letters dated 08/01/1964 and 28/09/1965 till the date of execution of agreement i.e. 21/05/1997 and thereafter the petitioner shall be liable to pay as per the prevailing rate time to time notified by the Government of Maharashtra. Needless to state that on the date of agreement i.e. on 21/05/1997, the rates mentioned in the Government Resolutions dated 10/06/1976 were the prevailing rates and thereafter, as per the Government Resolutions dated 28/11/2002 issued by the State of Maharashtra, the authority, which has been upheld by the Supreme Court in the case of ***Pepsico India Holding*** *(supra)*. To that extent, the petitioner succeeds. Hence, the following order :

ORDER

I. The writ petition is partly allowed.

II. The respondents shall charge the petitioner towards use of water beyond manufacturing capacity of 9000 MT at the rate of Rs.4.50 per 10000 cubic feet till 21/05/1997, which is the date of execution of agreement.

III. The petitioner shall be liable to pay water charges for use of water as per the prevailing rate as notified by the Government of Maharashtra from the date of execution of agreement dated 21/05/1997.

IV. The respondents are directed to correct the bills accordingly within a period of two months of receiving copy of the judgment.

V. Rule accordingly with no order as to costs.

(M.W. CHANDWANI, J.) **(A.S. CHANDURKAR, J.)**

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