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**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 5789 of 2006**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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| Approved for Reporting | Yes | No |
|---|---|---|
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RELIANCE INDUSTRIES LTD & ANR.
Versus
STATE OF GUJARAT & ANR.

==========

Appearance:
MR ARJUN M JOSHI(11247) for the Petitioner(s) No. 1
KUNAL NANAVATI FOR NANAVATI ASSOCIATES(1375) for the Petitioner(s) No. 2
DS AFF.NOT FILED (R) for the Respondent(s) No. 2
MR ANGESH PANCHAL AGP for the Respondent(s) No. 1
RULE SERVED BY DS for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

**Date : 15/04/2026**

**ORAL JUDGMENT**

1. RULE returnable forthwith. Learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents.

2. By way of present petition, the petitioners seek to challenge the notice for payment of water charges used for drinking purposes for an amount of Rs.146.79 Lakh issued by respondent No.2. Being



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aggrieved by the aforesaid action initiated by the respondent authority, the petitioners herein have approached this Court seeking following reliefs:

> *(A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus directing the respondents, their officer servants and agents to forebear from acting in a manner contrary to the understanding and G.Rs. Dated 30.01.2001 and 25.08.2003.*
>
> *(B) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus quashing and setting aside the impugned demand notice dated 21.7.2005 and G.R. dated 24.9.2002.*
>
> *(C) Pending the hearing and final disposal of the present petition, Your Lordships may be pleased to stay the recovery pursuant to impugned demand notice dated 21.7.2005 and be further pleased to direct the respondents and its officers, servants and agents to continue to supply water for drinking purposes at the rate prescribed in G.R. dated 30.1.2001 and understanding arrived at between the parties.*
>
> *(D) An ex-parte ad-interim relief in terms of prayer (C) above may kindly be granted.*
>
> *(E) Such other and further reliefs as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted.*

2. The brief facts leading to the filing of the present petition reads thus:

2.1 The petitioners required water supply for various purposes and in view thereof, entered into an agreement with the respondent – State Government on 09.11.1993 reciprocating the rights and obligations related to the project. The respondents appointed a



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governing Body to oversee and co-ordinate the construction of the Singanpur Weir and a formal agreement was executed between SMC and Hazira Industries Association reciprocating the rights and obligations related to the project.

2.2 It is the case of the petitioners that the Singanpur Weir was completed at an estimated cost of Rs.33 crores which was entirely borne by Hazira Industrial. That respondent No.1 cancelled the Tripartite Agreement and the petitioners and other companies were directed to pay water charges at exorbitant rates prescribed in resolution dated 1.5.1997. Being aggrieved, Hazira Industries Association had filed Special Civil Application No. 618 of 1998 before this Court. During the pendency of the said petition, the Government came out with clarification vide G.R. for calculating water rates for industrial and the said G.R. was amended vide G.R. dated 30.1.2001 and 24.9.2002. It is the case of the petitioners that the Government passed a resolution directing the industries to pay the charges in terms of clarification dated 27.1.1999 and the rates as prescribed in the revised G.R. dated 30.1.2001 at concessional rate of interest without penalty.

2.3 It is the case of the petitioners that as per the aforesaid resolution, the total amount payable by the petitioner - company as on 30.10.2003 between the period April 1997 and October 2003 to Rs.1065.10 Lakhs and, therefore, the petitioner - company paid the entire amount, for which respondent No.2 issued No Due Certificate certifying that there was no outstanding payment upto 31.10.2003 payable by the petitioner - company. On the aforesaid basis, the petitioner company agreed for withdrawal of Special Civil Application No. 618 of 1998 filed by the Hazira Industries Association.



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2.4 It is the case of the petitioners that the petitioners received demand notice dated 21.07.2005 issued by respondent No.2 reassessing the drinking water bills with retrospective effect from 1.5.1997 for Rs.146.79 Lakhs.

2.5 It is further the case of the petitioners that the company received demand notices from respondent No.2 demanding the payment and interest for non-payment in the context with the notice dated 21.07.2003.

2.3 Being aggrieved by the issuance of the aforesaid notices, the petitioner herein has approached this Court seeking the reliefs, as referred above.

3. Heard Mr. Arjun Joshi, learned counsel for the petitioner/s and Mr.Angesh Panchal, learned Assistant Government Pleader for the respondents – authorities.

4. Mr.Arjun Joshi, learned counsel appearing for the petitioner submitted that the water being supplied for domestic purpose has also been charged in the bill at industrial consumption rate. The aforesaid re-assessment dated 21.07.2005 is against the agreement entered into between the parties and the resolutions/circulars of the Government, as referred above. Mr.Joshi, learned counsel, submitted that the respondent herein has estopped from raising such bill once the respondents themselves have raised and collected bills and the same have been duly paid by the petitioner. Mr.Joshi, learned counsel, submitted that assuming while specifically denying that charges are payable, the same can be made payable only prospectively and the



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question of any retrospective recovery by the respondent would not arise. Mr.Joshi, learned counsel, submitted that the respondents have been billing the petitioner at the rate of Rs.146.79 Lakhs from the year 1997-98 till June, 2005 and by re-assessment the respondent is seeking to revise and charge difference, which is erroneous.

4.1 Mr.Joshi, learned counsel, submitted that huge quantity of water being drawn by it, is being supplied free of charge to Mora village without any charge whatsoever. It was submitted that such supply is made solely by way of a social gesture and a social obligation that the petitioner corporation believes it owes to the villages which are its neighbours and which lack basic infrastructure of portable water. It was submitted that the entire 0.34 MGD ltrs. of water per day could not be billed at the industrial rate. The respondent authority ought to have exempted completely from any water charges in view of the fact that the water was supplied solely as a social measure. It was submitted that if the said supply could not be exempted from water charges in that case also, the same could not have been billed at the rate applicable to industrial use and it ought to have been billed at the domestic rate of 50 paise per 1000 ltrs.

4.2 Mr. Joshi, learned counsel, submitted that the petitioner herein addressed several representations to the respondent authority wherein, it was specifically stated that the petitioner was not liable to pay water charges as demanded in letter dated 21.07.2005 and the bill. It was submitted that the action of the Government of re-assessment of bills retrospectively with effect from 1997-98 to 2005-06, is required to be quashed and set aside more particularly, considering the fact that the bills, which have been issued by the respondent authority between the said period, have been duly paid by



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the petitioner herein.

5. Per contra, Mr. Angesh Panchal, learned Assistant Government Pleader appearing for the respondent authority, placed reliance on the affidavit-in-reply filed by the respondent authority and submitted that the respondent authority sought to recover total amount of Rs.146.79 Lakhs for the period from 1997 to 2005 strictly in consonance with the formula fixed in the Government Resolutions dated 27.01.1997, 30.01.2001, 05.07.2002 and 24.09.2002 which have been accepted by the petitioner herein by way of agreement as referred above. Mr.Panchal, learned Assistant Government Pleader further submitted that the action of the Government is valid wherein, the respondent Government seeks to levy the rates for the supply of water from river and to recover the same from users/consumers.

5.1 Mr. Panchal, learned Assistant Government Pleader placed reliance on the statement showing re-assessment of water used for drinking purpose by the petitioner, which is also produced along with the petition and submitted that in view thereof, the petitioner herein is liable to pay the amount to the tune of Rs.146.79 Lakhs.

5.2 Mr.Panchal, learned Assistant Government Pleader further placed reliance on the following decisions:

(i) (2008) 8 SCC 172 (paragraphs 15 and 17)
(ii) (2010) 15 SCC 546 (paragraphs 6 and 7)
(iii) (1994) 3 SCC 552 (paragraphs 2 and 22)
(iv) Civil Appeal No.8550 of 2022 in SLP No.2816 of 2016 (paragraphs 1 and 17)



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6. Having heard the learned advocates appearing for the respective parties, the undisputed facts emerge for the consideration of this Court, are as under:

6.1 The petitioner herein required water for various purposes and entered into an agreement for a period of 20 years with the respondent State Government on 19.04.2001 with a validity up to 19.03.2002. The said agreement is duly produced.

6.2 As per Clause 9 of the said agreement dated 19.03.2002, the petitioner corporation was liable to pay fixed water charges for domestic use as well as for industrial use at the rate which the corporation was liable to pay for actual industrial usage. In view of the fact that the said agreement does not specify the rate at which the water charges are payable for domestic use, the resolutions of the Government on the said basis, are applicable to the petitioner herein and the petitioner herein has continued to pay the charges to the respondent Government at the said rate from the year 1997-98 till June, 2005.

6.3 The dispute in the present petition is with regard to the levy of water charges. It is apposite to refer to Clause 3 of the said agreement dated 19.03.2002, which reads thus:

> *"3.(i) The licensee shall pay for the quantity of water reserved and actually drawn as measured in the manner provided under clause – 4 herein below at the terms given below.*
>
> *(ii) The water charges for water actually drawn shall be Rs.2.50 per 1000 liter till the water rate is revised by Government as per Government Resolution No.WTR-1099/3453/63/P dtd.30.01.2001. Upon the bill amount*



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*remaining outstanding for more than three months, an interest at the rate of 24 percent plus 1 percent service charges shall be chargeable from the Licensee.*

*(iii) The Licensee shall pay fixed water charges of Rs.3,11,11,688.00 (Rupees Three Crore Eleven Lakhs Eleven Thousand Six Hundred Eighty Eight only) annually for the quantity of water got reserved at the rate of Rs.0.75 per 1000 litre or as may be fixed by Government from time to time, for the quantity got sanctioned from Government. The licensee shall get sanction the reserved quantity for a period of minimum five years. These charges shall be paid in the first week of April every year even if no water is drawn. These charges shall be in addition to the normal water charges to be paid as per clause-3(i) above.*

*(iv) The fixed water charges and the water rate so fixed shall be subject to upward revision that may be made by Government Department from time to time in connection with water reserved and used for irrigation or non-irrigation purpose. The rate fixed by the Government would be exclusive of cost of pumping conveying etc. Of water from source.*

*(v) The charges as mentioned in sub clause (i) above shall be paid in advance by the Licensee before 10th day of each month following the month to which water charges pertain, calculated as per reserved quantity of the water for the month. The bills as per actual shall be prepared every month and served on the Licensee for payment thereof.*

*(vi) If the arrears of water charges referred to above accumulate for more than six months, the Government shall be at liberty to ask Licensee to stop drawl of water from the sources and it shall be incumbent on the Licensee to close in case of default Government may take action to stop entry into the intake without any notice at the risk and cost of the Licensee.*

*(vii) If the measuring device referred to in Clause-4 below ceases to function or goes out of order in any month, the charges leviable in respect of that month shall be calculated on the basis of the average quantity of water drawn or quantity of water drawn in the same month of preceding year whichever is higher provided that there has been no increase in capacity of the Plant/Plants and the*



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*corresponding water requirements thereof during such year. If the capacity of the Plant/Plants has increased during such year the water drawn shall be correspondingly estimated on prorate basis. For the purpose of such estimate the licensee shall furnish necessary data to the Executive Engineer concerned whose decision in the matter shall be final and binding to the Licensee."*

6.4 Pursuant to the aforesaid agreement, the petitioner herein stand governed by the following Government Resolutions:

*(a) Government Resolution dated 22.05.1990 fixing rates of water for industrial purposes and for drinking water purposes.*
*(b) Government Resolution dated 01.05.1997, by which the rates of water effective from 01-04-1990 were upwardly revised.*
*(c) Government Resolution dated 27.01.1999, by which it was abundantly made clear that out of the total quantity of water supplied*
*to an industry, rebate for the drinking water quantity be given and in*
*respect of the said quantity for drinking water, rate of Rs. 0.50 paise*
*per 1000 litres be assessed.*
*(d) Government Resolution dated 30.01.2001, by which the water charges came to be revised.*

*(e) Government Resolution dated 24.09.2002, refers to the earlier resolutions Dated 1-5-1997, 27-1-1999 and 30-1-2001. By this resolution, it is reiterated that separate rates will be applicable for water supply towards industrial purposes and for drinking water purposes. This resolution, for the first time, stipulated that in the first instance, the entire quantity of water given to an industry is to be assessed at the rates applicable for industrial purpose and from the said estimation, the quantity of water for drinking purposes is required to be rebated.*

6.5 As per the Government Resolution dated 30.01.2001, water rate structure was framed for two purposes; (i) water used exclusively for drinking purpose and (ii) water used exclusively for industrial purpose.



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There was no separate provision for quantity or water used for drinking purpose by the industry. The said provision was made vide two Government Resolutions dated 27.01.1999 and 24.09.2002 according to which, fixed and normal water charges for full quantity drawn for industries are to be charged at industrial usage rate out of which, rebate for the quantity of water used for drinking purpose is to be given.

6.6 It is the case of the respondent authority that owing to inadvertence legally claimable amount was not shown in the bill raised at the material time in consonance with the prevailing Government Resolutions and no sooner the mistake was detected by the authorities, immediately by letter dated 29.07.2005, the respondent authority demanded the outstanding amount of Rs.1.46 Lakhs, which is under challenge.

7. At this stage, it is apposite to refer to the ratio as laid down by the Hon'ble Supreme Court in case of the Union of India and Ors. vs. M/s. Anglo Afghan Agencies Etc., reported in AIR 1968 SC 718. Paragraphs 9, 16 and 23 of the same read thus:

> *"9. "The Crown cannot escape by saying that estoppels 'do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so. as to fetter its future executive action. That doctrine was propounded by Rowlatt J., in Rederiaktiebolaget Amphitrite v. The King but it was unnecessary for the decision because the statement there was not a promise which was intended to be binding but only an expression of intention. Rowlatt, J., seems to have been influenced by the cases on the right of the Crown to dismiss its servants at pleasure, but those cases must now all be read in the light of the judgment of Lord Atkin in Reilly v. The King--(1954) A.C. 176, 179).*



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*In my opinion the defence of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract." Denning, I was dealing with a case of a serving army officer, who wrote to the War Office regarding a disability and received a reply that his disability had been accepted as attributable to "military service". Relying on that assurance he forbore to obtain an independent medical opinion. The*
*Minister of Pensions later decided that the appellant's disability could not be attributed to war service. It was held that as between subjects such an assurance would be enforceable because it was intended to be binding intended to be acted upon, and was in fact acted upon; and the assurance was also binding on the Crown because no term could be implied that the Crown was at liberty to revoke it.*

*16. In each of the three cases, the Court observed that the Court was competent to grant relief in appropriate cases, if, contrary to the Scheme, the authority declined to grant a licence or import certificate or the authority acted arbitrarily. Therefore even assuming that the provisions relating to the issue of Trade Notices offering inducement to. the prospective exporters are in character executive, the Union Government and its officers are, on the authorities of tiffs Court, not entitled at their mere whim to ignore the promises made by the Government. We cannot therefore accept the plea that the Textile Commissioner is the sole judge of the quantum of import licence to be granted to an exporter, and that the Courts are powerless to grant relief, if the promised import licence is not given to an exporter who has acted to his prejudice relying upon the representation. To concede to the Departmental authorities that power would be to strike at the very root of the rule of law.*

*23. Under our jurisprudence the Government is not exempt from liability to, carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise, solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances. in which the obligation has arisen. We agree with the High Court that the impugned order passed by the Textile*



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*Commissioner and confirmed by the Central Government imposing cut in the import entitlement by the respondents should be set aside and quashed and that the Textile Commissioner and the Joint Chief Controller of Imports and Exports be directed to issue to the respondents import certificates for the total amount equal to 100% of the f.o.b. value of the goods exported by them, unless there is some decision which fails within cl. 10 of the Scheme in question."*

7.1 It is also apposite to refer to the ratio as laid down by the Hon'ble Supreme Court in case of **Madhyamam Broadcasting Limited Vs. Union of India and Others**, reported in **2023 SCC Online SC 366**. Paragraph 62 and 184 of the said decision read thus:

*"62. The principles of natural justice ensure that justice is not only done but it is seen to be done as well. A reasoned order is one of the fundamental requirements of fair administration. It holds utmost significance in ensuring fairness; scholars and courts now term it as the third principle of natural justice. The rule of a reasoned order serves five important purposes. Firstly, it ensures transparency and accountability. It places a check on arbitrary exercise of power. Lord Denning observed that in giving reasons "lies a whole difference between a judicial decision and an arbitrary one". Justice Bhagwati observed in Maneka Gandhi (supra) that the rule is "designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case." Secondly, non-reasoned orders have the practical effect of placing the decision out of the purview of judicial review. A non-reasoned order limits the power of the courts to exercise judicial review because the scope of judicial review is not limited to the final finding on law or facts but extends to the reasons to arrive at the finding. A limitation on the right to appeal necessarily means that the scope of judicial review is restricted. Thirdly, articulation of reasons aids in arriving at a just decision by minimalizing concerns of arbitrary state action. It introduces clarity of thought and eschews irrelevant and extraneous considerations. Fourthly, it enhances the legitimacy of the institution because decisions will appear to be fair. There is a higher probability that the finding through a reasoned order is*



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*just. Fifthly, reasoned orders are in furtherance of the right to information and the constitutional goal of open government. Secrecy broods partiality, corruption and other vices that are antithetical to a governance model that is premised on the rule of law.*

*184. In view of the discussion above, the appeals are allowed and the order of the MIB dated 31 January 2022 and the judgment of the High Court dated 2 March 2022 are set aside. We summarise our findings below:*

*(i) Security clearance is one of the conditions required to be fulfilled for renewal of permission under Uplinking and Downlinking Guidelines;*

*(ii) The challenge to the order of the MIB and judgment of the High Court on procedural grounds is allowed for the following reasons:*

*(a) The principles of natural justice were constitutionalised by the judgement of this Court in Maneka Gandhi (supra). The effect is that the courts have recognised that there is an inherent value in securing compliance with the principles of natural justice independent of the outcome of the case. Actions which violate procedural guarantees can be struck down even if non-compliance does not prejudice the outcome of the case. The core of the principles of natural justice breathes reasonableness into procedure. The burden is on the claimant to prove that the procedure followed infringes upon the core of procedural guarantees;*

*(b) The appellants have proved that MBL's right to a fair hearing has been infringed by the unreasoned order of the MIB dated 31 January 2022, and the non-disclosure of relevant material to the appellants, and its disclosure solely to the court. The burden then shifts on the respondents to prove that the procedure that was followed was reasonable and in compliance with the requirements of Articles 14 and 21 of the Constitution. The standard of proportionality has been used to test the reasonableness of the procedure.*

*(c) The judgments of this court in Ex-Armymen's Protection Services (supra) and Digi Cable Network (supra) held that the principles of natural justice may be excluded when on the facts of the case, national security concerns overweigh the duty of fairness;*



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*(d) Though confidentiality and national security are legitimate aims for the purpose of limiting procedural guarantees, the state has been unable to prove that these considerations arise in the present factual scenario. A blanket immunity from disclosure of all investigative reports cannot be granted;*

*(e) The validity of the claim of involvement of national security considerations must be assessed on the test of (i) whether there is material to conclude that the non-disclosure of information is in the interest of national security; and (ii) whether a reasonable prudent person would draw the same inference from the material on record;*

*(f) Even assuming that non-disclosure is in the interest of confidentiality and national security, the means adopted by the respondents do not satisfy the other prongs of the proportionality standard. The non- disclosure of a summary of the reasons for the denial of security clearance to MBL, which constitutes the core irreducible minimum of procedural guarantees, does not satisfy the suitability prong;*

*(g) The courts assess the validity of public interest immunity claims, which address the same harms as the sealed cover procedure, based on the structured proportionality standard. The power of courts to secure material in a sealed cover when contradistinguished with the scope of assessment of public interest immunity claims is rather unguided and ad-hoc. The standard of review that is used by the courts in public interest immunity claims and the lack of such a standard in sealed cover proceedings to protect procedural safeguards indicates that public interest immunity claims constitute less restrictive means. Additionally, while public interest immunity claims conceivably impact the principles of natural justice, sealed cover proceedings infringe the principles natural justice and open justice;*

*(h) The courts could take the course of redacting confidential portions of the document and providing a summary of the contents of the document to fairly exclude materials after a successful public interest immunity claim; and*

*(iii) The challenge to the order of MIB is allowed on*



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> *substantive grounds. The non-renewal of permission to operate a media channel is a restriction on the freedom of the press which can only be reasonably restricted on the grounds stipulated in Article 19(2) of the Constitution. The reasons for denying a security clearance to MBL, that is, its alleged anti- establishment stance and the alleged link of the shareholders to JEI-H, are not legitimate purposes for the restriction of the right of freedom of speech protected under Article 19(1)(a) of the Constitution. In any event, there was no material to demonstrate any link of the shareholders, as was alleged."*

7.2 Further, it is also apposite to refer to the order dated 27.03.2006 whereby Rule came to be issued and interim relief came to be granted in favour of the petitioner. The said order reads thus:

> *"1. RULE. Notice as to interim relief returnable on 3rd April, 2006.*
>
> *2. In the meantime, the water connection of the petitioner shall not be disconnected by the respondent on condition that the petitioner shall not transfer / alienate, assign or create any interest in favour of a third party in any manner whatsoever in respect of the property in question.*
>
> *3. The petitioner shall pass a Resolution and file an Undertaking before this Court to the effect that if it fails in this petition, it will pay the amount in question along with interest at the rate of 12% per annum. Such Undertaking to be filed by a competent officer or by any other person authorized on his behalf within a period of four weeks from today. Direct Service is permitted."*

8. Considering the aforesaid, in the facts of the present case, the following emerge for the consideration of this Court:

(a) The petitioner entered into an agreement with the State Government for drawing water from Singanpore by an agreement dated 19.03.2002 for a period of 20 years. Clause 3 of the said agreement states that the petitioner corporation was liable to pay



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water charges for water actually drawn at the rate of Rs.2.50 per 1000 liter till the water rate is revised by Government as per Government Resolution No.WTR-1099/3453/63/P dtd.21-01-2001. Upon the bill amount remaining outstanding for more than three months, an interest at the rate of 24 percent plus 1 percent service charges shall be chargeable from the petitioner. Further, the petitioner shall pay fixed water charges of Rs.3,11,11,688=00 (Rupees Three Crore Eleven Lakhs Eleven Thousand Six Hundred Eightly Eight only) annually for the quantity of water got reserved at the rate of Rs.0.75 per 1000 litre or as may be fixed by Government from time to time, for the quantity got sanctioned from Government. The petitioner shall get sanction the reserved quantity for a period of minimum five years. These charges shall be paid in the first week of April every year even if no water is drawn. These charges shall be in addition to the normal water charges to be paid as per clause-3(i) of the agreement.

(b) The respondent State Government raised bills for supply of water in accordance with the said agreement till 2005.

(c) The respondent - State Government demanded further amount by the impugned communication dated 21.07.2005 seeking further recovery on the basis of reassessment of water charges used for drinking purposes towards fixed charges and normal water charges for the entire period between 1997-98 to 2005-06. Upon the said reassessment, the respondent Government has claimed that the petitioner corporation owes to the respondent an amount of Rs.146.79 Lakhs. The State Government has issued the impugned communication dated 21.07.2005 placing reliance on the ground that owing to inadvertence legally claimable amount could not be shown in



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the bill raised at the material time in- consonance with the prevailing Government Resolution and no sooner the said mistake was effected by the respondent authority immediately, a letter dated 21.07.2005, duly produced at page 85, came to be addressed to the petitioner herein demanding total outstanding dues to the tune of Rs.146.79 Lakhs for the period from 01.04.1997 to 03.06.2005 in accordance with the Government Resolution.

(d) The question arises whether the State Government may seek further recovery by the impugned communication dated 21.07.2005 through re-assessment of water charges used for drinking purposes, fixed charges and normal water charges for the period from 2002-03 to 2005-06, claiming an amount of Rs.146.79 Lakhs. The petitioner resisted to the same by addressing a letter dated 29.07.2005.

(e) It is the case of the petitioner and undisputed that the water supplied to the petitioner under the said agreement was free of charge. While entering into an agreement with the respondent – State on 19.04.2001 for the period of 20 years, as per the said agreement, the petitioner herein is governed by the Government Resolutions and the petitioner has been paying the said charges as levied by the respondent State till June, 2005. It appears that the respondent authority has charged the petitioner herein for the industrial usage along with drinking water usage charges however, a rebate would be given on total drinking water usage charge i.e. 0.50 paisa for every 1000 ltrs. at the rates that were applicable by the Government Resolutions for the drinking water usage charges, which came to be made applicable retrospectively from 01.04.1997. The resolution of 24.09.2002 states that the rates mentioned in the Government Resolution dated 30.01.2001 would be made applicable



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retrospectively from 01.04.1997. By applying the resolution of 2002, the respondent authority has proceeded to bill the petitioner herein by raising a separate bill for drinking water from 1997-1998 to 2005-06 which according to the respondent authority, indicates that there are two separate rates prescribed for industrial use and drinking water use for the entire period and thereby, raised the impugned bill dated 27.07.2005 seeking recovery of the amount due and payable qua the drinking water charges retrospectively from 1997-1998 to 2004-05.

(f) It is the submission of the petitioner that the petitioner has supplied substantial quantity of water free of charge to Mora village. Further, the petitioner has not charged from the said villages for the water supplied by the petitioner and the same was by way of social gesture to the villages which lack basic infrastructure of potable water.

(g) It was submitted by Mr. Angesh Panchal, learned AGP that the petitioner herein is bound by the terms of the contract.

Considering the aforesaid submissions also the transaction concluded on payment of charges in June, 2005 as had been raised by the respondent authority and the petitioner having paid the said amount of bill duly raised by the respondent authority. Had the petitioner been aware that the petitioner would have charged more in accordance with the Government Resolution of 2002, the petitioners could have conducted themselves in a different manner.

9. Considering the aforesaid, the transaction having been concluded, in the opinion of this Court, it is not open for the



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respondent State-Government to ask the petitioner to pay arrears since the petitioner cannot pass on the burden to the consumers. It was a clear and unequivalent contract knowing and intending that it would be acted upon by the petitioner on the price charged.

10. In the opinion of this Court, it would be unfair now to demand from the petitioner the arrears of charges on the basis of the Resolution which was not acted upon. In view thereof, the contention of the petitioner that the bill raised by the respondent demanding arrears from the petitioner by communication dated 21.07.2005 requires consideration. This Court is inclined to interfere with the said communication issued by the respondent State Government. The contract entered into between the parties has been executed, concluded and the benefit has been passed on to the consumers by the petitioner. Considering the contract executed between the parties, the petitioner herein ought not to have been asked for payment of arrears by the respondent State placing reliance on the Government Resolution dated 24.09.2002.

11. It is also apposite to take into consideration the present resolution which is in effect from 03.02.2007 whereby, the 11 provisions resolutions of the Government prior to 03.02.2007 stand discontinued in which the resolution dated 30.01.2001 and 01.05.2002 which are subject matter of dispute-in-question, through which the respondent State Government is asking the amount from the petitioner, are also mentioned at No.4 and No.5 in those 11 resolutions and thus it has been declared that the water supplied for drinking water purpose would be charged at Rs.1/- per 1000 ltrs. and water supplied for industrial use would be charged at Rs.8/- per 1000 liters for the year 2006-07, Rs.9/- per 1000 liters for the year 2007-08



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and Rs.10/- per 1000 liters for the year 2008-09, along with the rise of 10% every year.

12. For the aforesaid reasons, the petition succeeds and is hereby allowed. The impugned communication/order dated 21.07.2005 as well as the ensuing bills raised by the respondent authority are hereby quashed and set aside by exercising Article 226 of the Constitution of India. Since the communication dated 21.07.2005 is quashed and set aside, any consequential action arisen out of the said communication is also quashed and set aside.

**(HEMANT M. PRACHCHHAK,J)**

V.R. PANCHAL



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