

Before the
Maharashtra Water Resources Regulatory Authority
9th Floor, Centre – 1, World Trade Centre, Cuffe Parade, Mumbai – 400 005
Tel. No. 022 – 2215 2019, Fax 022 – 2215 3765
E-mail : mwrralibrary@yahoo.co.in

Case No. 2 of 2008

In the matter of

**Dispute between Chief Engineer, Water Resources Department, Nagpur
and Maharashtra Airport Development Company Ltd. (MADC),
Mumbai regarding water tariff for supply of water to MADC from
Wadgaon dam.**

Shri Ajit M. Nimbalkar, Chairman
Shri A.K.D. Jadhav, Member (Economy)
Shri A. Sekhar, Member (Engineering)

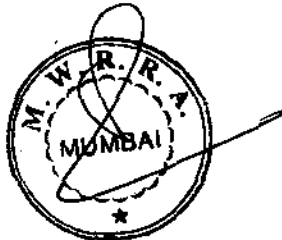
Maharashtra Airport Development Company Ltd.
8th Floor, Centre – 1, World Trade Centre,
Cuffe Parade, Mumbai – 400 005.

.... Appellant

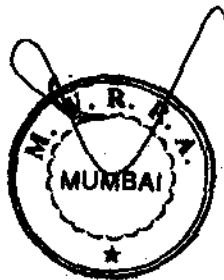
Versus

Chief Engineer,
Water Resources Department,
Sinchan Seva Bhavan,
Civil Lines, Nagpur – 440 001.

.... Respondent



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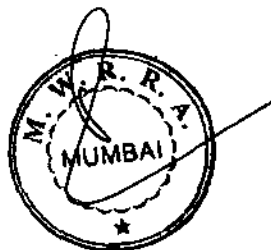


ORDER

Date : 17th November, 2008

Maharashtra Airport Development Company Ltd., ("MADC") filed a representation before this Authority vide its Vice Chairman & Managing Director's letter dated March 23, 2006. It is averred in the said representation that MADC has been constituted by the Government of Maharashtra to develop the existing airport as a Multi Modal International Passenger and Cargo Hub Airport at Nagpur (MIHAN) alongwith special economic zone. It is also averred therein that Wadgaon Reservoir would be the source of water supply for MIHAN project as there is no other reliable source of water nearby. The head works proposed for this project comprising approach channel, intake well, inspection well, connecting pipe, Jackwell and Approach Bridge / bund are located in the submergence of Wadgaon Reservoir. Water will be lifted from Jackwell through vertical turbine pumps installed in overhead pump house. Lifted water will be conveyed through M.S. Transmission Main of 965 mm diameter to the project area. Total water demand from the source for MIHAN project has been calculated as 60 million litre per day and for a year the same comes to about 22 Mm³ (million cubic meters).

2. It has been represented to this Authority that MADC had, vide their letter dated October 4, 2005, requested the Water Resources Department of the Government of Maharashtra ("WRD") for reservation and allocation of the said 22 Mm³ of water from Wadgaon dam of Lower Wunna Project for the proposed MIHAN Project. The WRD had, vide their letter dated 21-11-2005, asked MADC to deposit Rs. 31 crore in the first instance for processing the request comprising Rs. 19.67 crore for proportionate cost of storage of this water in the reservoir and Rs. 11.34 crore for rehabilitation of canal. MADC is of the view that it was not proper on the part of WRD to charge them for both cost of dam and cost of rehabilitation and accordingly the cost of Rs. 31 crore was considered as quite high, thereby having the effect of making the MIHAN project unviable. MADC is also of the view that even if storage cost is to be considered, only depreciated cost should be taken into account. It is averred in MADC's representation to this Authority that Secretary, Irrigation was of the view that if this much of water is reserved for the use of MIHAN project at Nagpur, there would need to be requisite augmentation to the capacity of Wadgaon Reservoir to the similar extent by minimizing the seepage loss by providing the canal lining in the down stream, for which the expenditure will be around Rs. 31 crore. MADC has also submitted that sanction for the reservation of the required quantity of water is still pending which is causing delay in the release of tenders for



construction of head works and laying of water transmission main. MADC has sought adjudication of the dispute with WRD by filing their aforesaid letter dated 23-3-2006 before this Authority.

3. The Authority asked the Chief Engineer, Nagpur on 7th September, 2006 to act as the Primary Dispute Resolution Officer (PDRO) to resolve the dispute. The action was ex post facto ratified by the Government of Maharashtra, Water Resources Department who issued a Government Resolution No. MWRRA – 20069 / (308/06) / WRI, dated 12-12-2006 authorising certain officers to be the PDRO for each River Basin Agency in accordance with Section 22 of the Maharashtra Water Resources Regulatory Authority Act, 2005 (“MWRRA Act”), to resolve the disputes with regard to the issuance or delivery of water Entitlement, under the MWRRA Act. Under the said GR approval has been granted for the appointment of following competent officers as Primary Dispute Resolution Officers to resolve the disputes in the context of the entitlement of water and its distribution:

- a) Major Irrigation Projects - Chief Engineers concerned with Management
- b) Medium Irrigation Projects - Superintending Engineers concerned with Management
- c) Minor Irrigation Projects - Executive Engineers concerned with Management

4. In his order dated October 27, 2006, the PDRO gave the following decision.

- (i) Proportionate cost of head works for gross allocation of 26.16 Mm³ amounting to Rs. 23.12 crore is to be paid by MADC. Since proportionate cost is worked out on actual expenditure incurred on construction of head works, depreciation is not applicable.
- (ii) As per GoM GR dated 21-2-2004, it is mandatory to recover restoration charges for curtailed irrigation potential from non-irrigation user agency. This works out to Rs. 11.47 crore

Hence total charges payable by MADC was decided as Rs. 34.59 crore.

5. MADC filed its appeal before this Authority under letter dated January 5, 2007 against the aforesaid Order of the PRDO dated October 27, 2006. MADC sought thereunder a hearing and resolution of the dispute by way of a decision by this Authority. In their letter dated June 2, 2007, MADC conveyed that though they have deposited on 2-1-2007 the amount of Rs. 34.59 crore as decided by PDRO vide his order dated 27-10-2006, they are not accepting his decision for the following reasons.



- (i) the order of the PDRO does not meet the requirement of dispute resolution ie. the Arbitration Act of 1996 according to which the award should be a reasoned and speaking order and needs to consider the provisions of the MWRRA Act and State Water Policy and natural justice.
- (ii) proportionate cost of head works should be based on depreciated cost
- (iii) either proportionate cost or restoration cost should be charged and not both.
- (iv) charging of proportionate cost is not contemplated in the MWRRA Act.
- (v) through water rates, only O&M cost is to be recovered and not the capital cost.
- (vi) command of the project has not been notified under MMISF Act. Hence it cannot be said that some area is deprived of water, as projected by WRD, to charge for rehabilitation / upgrading of canal.
- (vii) share in evaporation loss should not be added to MADC utilization. This water rate should be on net use and not gross use.

6. The Authority held discussions on March 2, 2007 with the Vice Chairman & Managing Director, MADC and on April 2, 2007, with the Chief Engineer, WRD to understand the issue in dispute that requires adjudication in the light of the PDRO order.

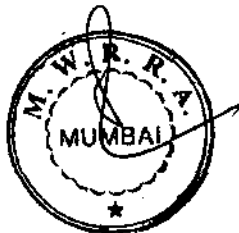
7. Vide a subsequent letter dated July 7, 2008, MADC requested for a suitable date for presenting their case. The Authority fixed a hearing on July 18, 2008. The following were present:

MADC : Shri S.Y. Shukla, former Secretary, WRD
Shri S.Y. Chahande, Chief Engineer, MADC
Shri C.G. Gupta, Supdt. Engineer, MADC
WRD : Shri M.I. Shaikh, Chief Engineer

During the hearing, MADC reiterated their stand. The Authority directed WRD to send a written response to the various issues raised by MADC.

8. In the reply of August 26, 2008, WRD gave the following rejoinder to issues raised by MADC.

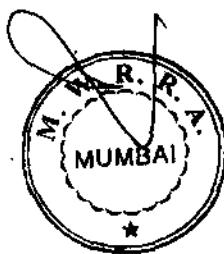
- (i) irrigation potential envisaged in the project will go a long way in removing backlog in Nagpur and Wardha districts



- (ii) MADC had the option of constructing their own dam or tapping other similar sources which are far away.. Since they chose Wadgaon dam as the source with attendant saving in cost, they should accept the charges levied.
- (iii) charging both costs is justified as per Section 11 (h) (ii) of the MWRRA Act.
- (iv) provisions of Arbitration Act are not relevant.
- (v) question of considering depreciated cost does not arise as the capital account of the project is not closed. Charges like establishment charges, interest on capital, any enhancement in land compensation have not been considered.
- (vi) MADC have the option of not sharing the capital cost but paying the appropriate (higher) tariff.
- (vii) as per GR of 21-2-2004, rehabilitation cost has been worked out at Rs. 50000 per ha to restore affected command by lining.
- (viii) detailed cost estimate for lining can be made available to MADC for their vetting.
- (ix) MADC has approached WRD at a delayed stage when all the distribution system is completed.
- (x) to supply 22 Mm³ to MADC, WRD has to store 26.16 Mm³ and hence proportional cost considering gross storage is correct.

9. Wadgaon dam is one of the two dams in Lower Wunna Project, a major project in Wardha basin in Wardha district. The gross storage of the two reservoirs is 189.18 Mm³. The ultimate potential of project is 25,545 ha by June 2006, the created potential as reported is 23,153 ha. The actual irrigation in 2006-07 was only 9,215 ha. A reservation of 31.46 Mm³ has already been made in the reservoirs for other non irrigation use at the inception stage of the project when MADC was not in the picture. The gross allocation required by MADC is 26.16 Mm³ including prorata share in evaporation loss. In order to address the grievances raised by MADC, the following issues are framed based on the stands taken by MADC & WRD:-

- (i) whether MADC is entitled for a non-irrigation entitlement from a existing project where commitments for irrigation & non irrigation uses are already made?
- (ii) whether keeping in view slow development of irrigation potential, it can be surmised that irrigation entitlements will never be fully utilized and can thus be permanently diverted to non irrigation use?



- (iii) whether the order of PDRO is legally tenable in view of the fact that MADC has been ordered to share capital cost whereas as per GR this is optional and linked to higher or lower tariff rate?
- (iv) whether charging Rs. 11.47 crore towards rehabilitation of canal at Rs. 50000 per ha of area likely to be affected is correct?
- (v) whether cost of lining to minimize the seepage loss through canal and save 26.16 MM³ can be considered as cost of infrastructure i.e. capital cost of project.

10. The above issues are answered as below

- (i) it is a fact that MADC is a late entrant in so far as the project is concerned where irrigation and non irrigation uses have already been decided and there is no water to spare from existing storage. It is also a fact that the Authority could not fix the entitlements for the project which was completed 8-10 years ago as the Authority came into existence only in the year 2005. Since industrial water use has a higher priority over irrigation in the State Water Policy (Section 4), every effort should be made to meet additional industrial demands.
- (ii) However, since the Lower Wunna project benefits irrigation backlog districts, provision of water to MIHAN project cannot be at the expense of irrigation curtailment as the mandate of the Authority is to remove irrigation backlog as per Governor's directives (Section 11 (f) and 21 of the MWRRA Act). Curtailment of irrigation to meet such additional demands is not encouraged in backlog areas and other means of meeting the demand like saving of water by lining should be resorted to. Effort should be made to find out reasons for non utilization of created potential and to close the gap between potential created and potential utilized.
- (iii) the order of the PDRO is not legally tenable as MADC cannot be ordered to share the cost of the dam which is optional as per present Maharashtra Government Circular in Marathi dated 20-11-2003 and reiterated in GR dated 21-2-2004 as under

"1.0 Share of Capital Cost:

As conveyed in GR dated 20-11-2003, it is not obligatory on the part of Water User Associations to share capital cost and it is optional....."

- (iv) lining cost has been indirectly estimated considering Rs. 50,000 per ha of affected potential which is only an indicative figure given in Govt. Circular dt. 21-2-2004 for restoration of irrigation lost due to reservation for non irrigation purposes.



This is not the correct way of assessing lining cost whereas what is required is cost estimate of lining to save 26.16 Mm³ of water.

- (v) the cost of lining to minimize transmission losses and save 26.16 Mm³ of water can be considered as basic infrastructure cost i.e. capital cost of the project.

11. Having heard the parties and after considering the material placed on record, at the outset the Authority wishes to observe that in this case it has adopted the approach of a facilitator in resolving the dispute between MADC and WRD without being restricted by the technicalities. Since, MADC filed its appeal before this Authority under letter dated January 5, 2007 against the aforesaid Order of the PRDO dated October 27, 2006, the delay of around nine days beyond the stipulated period of sixty days for appeal, is hereby condoned under Section 22(3) of the MWRRA Act, in the interest of justice. After considering all relevant provisions of the State Water Policy and the MWRRA Act, in respect of the issues framed, the Authority directs as under:

- (i) The order of the PDRO dated 27-10-2006 is faulty on two counts viz. MADC cannot be ordered to share the proportionate cost of the dam as it is optional as per Maharashtra Government Circular in Marathi dated 21-2-2004 and cost of rehabilitation at Rs. 50,000 / ha of area likely to be affected is not technically the correct way of estimating cost of lining required to save 26.16 Mm³ of water. The correct way is to estimate the cost of lining required to save 26.16 Mm³ of water. The order of the PDRO is thus quashed and set aside.
- (ii) Additional water for MIHAN can become available only by lining of canal to the required extent to save seepage water. This will not curtail planned irrigation.
- (iii) WRD should prepare an estimate of lining required in critical reaches to save 26.16 Mm³ of water. The estimate should be sent immediately to the MADC for their acceptance with reference to quantities, rates, etc. The share cost of Rs. 23.12 crore paid by MADC should be either returned to MADC or adjusted against the cost of lining with the consent of MADC.
- (iv) MADC has a choice of depositing the full cost of the lining with WRD in which case they will be charged lower tariff applicable as per prevailing rates fixed by the Govt. from time to time for sharing



cost of storage (since lining is also treated as basic infrastructure) or treating Rs. 11.47 crore already paid as the first installment of the lining estimate in which case they will be charged at higher tariff at prevailing rates till full cost of lining with escalation is paid to WRD. If MADC chooses to pay the lining cost in installment, they will be bound to make the payments in time and also liable to be charged with the actual escalated cost of lining in future installments. If full cost is deposited initially itself, escalation will not be chargeable to MADC.

- (v) Lining work may be done in phases as per need. WRD should decide the construction schedule of lining in such a way that there is no impact on the availability of water for irrigation backlog area because of diversion of water to non irrigation in MADC.

With the above, Case No. 2 of 2008 stands disposed off.

Sd/-

Shri. A. Sekhar
Member (Engineering)

Sd/-

Shri. A.K.D. Jadhav
Member (Economy)

Sd/-

Shri. Ajit M. Nimbalkar
Chairman



Shri. S. V. Sodal
Secretary