



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. 3 of 2010

In the matter of

**Petition against changes in the Distribution Plan of Water from
Hetavne Medium Irrigation Project, District Raigad**

**Coram : Shri A.K.D. Jadhav, Member (Economy) & Presiding Chairman
Shri V.V. Gaikwad, Member (Engineering)**

- (i) Professor N.D. Patil, President, Maharashtra Irrigation Federation
- (ii) Advocate Surekha Dalavi, Secretary, Shramik Kranti Sanghatana
- (iii) Dr Subhodh Wagle, Trustee and Group Co-ordinator,
- (iv) Shri Sachin Warghade, Senior Research Associate
- (v) Shri Mandar V. Sathe, Senior Research Associate
- (vi) Shri Tejas V. Pol, Senior Research Associate

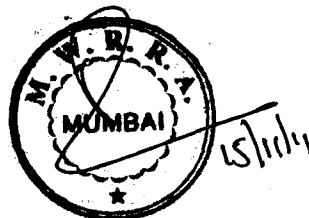
Resources &
Livelihoods
Group
PRAYAS

----- Petitioners

Versus

- (i) Chief Engineer, Konkan Region, Water Resources Department,
Government of Maharashtra
- and
- (ii) Executive Director (ED), Konkan Irrigation Development
Corporation (KIDC), Government of Maharashtra

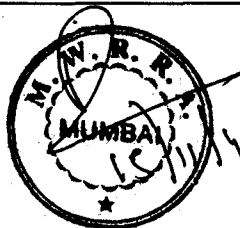
----- Respondents



ORDER

A joint Petition has been filed by the Petitioners before this Authority in which they have contended that the Water Resources Department (WRD) has issued a number of permanent and temporary orders reserving water from the Hetavne Medium Irrigation Project for non-irrigation users from out of the water meant for irrigation as per the original distribution plan. This has lead to a reduction in the irrigation potential of the command area. The Petitioners have argued that the power to make such changes vests not with the WRD but with the Authority vide section 11 of the MWRR Act, 2005. The Petitioners have prayed that the Authority should take cognizance of this encroachment on its powers and cancel all permanent and temporary reservations of water for non -irrigation users. The Petitioners have also prayed that WRD should be directed to return the money collected from the non-irrigation users in the form of compensation or capital contribution for the water reservations made for them and WRD should be further directed not to process any fresh proposals for such reservations. The prayers are as follows :-

- a. *Without prejudice to the other arguments put forth in this Petition, take suo-moto cognizance of the decisions to change the water distribution pattern in Hetavne Project, which involves non-cognizance and/or encroachment on the power and authorities of the MWRRRA by WRD.*
- b. *Direct WRD to cancel all permanent and temporary water reservation and water distribution to non-irrigation users in Hetaone Project – made before as well as after MWRRRA law was passed – that are not in conformity with the water distribution plan as per the originally sanctioned project plan or report.*
- c. *Direct WRD to return the money collected from non-irrigation users in the form of 'compensation' or 'capital contribution' in exchange of water reservations to such users.*

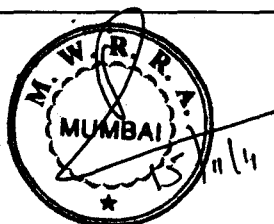


- d. *Direct WRD and KIDC and other concerned agencies to not undertake any further process on current and future proposals, if any, for reservation of water from Hetaune Project to non-irrigation users.*

2. Chronology of Events

The chronology of events subsequent to the filing of the Petition was as follows:

- 7/5/2010 & → Authority served notice on the Respondents
12/5/2010 on 7/5/2010 and subsequently also on the Principal Secretary (WRP & D) on 12/5/2010, with direction to submit their replies to the Petition.
- 1/6/2011 → Respondents brought to the notice of the Authority vide letter dated 1/6/2010 that a similar matter (No 1038/2010) is pending before the Nagpur bench of the Bombay High Court relating to allocation of water from the Upper Wardha project to a thermal power plant and as the decision in that matter will have a bearing on the present Petition, the Authority may be pleased to defer the hearing on the present Petition till the outcome of the above matter in the High Court is known.
- 22/4/2011 → The State government enacted the Maharashtra Water Resources Regulatory Authority (Amendment & Continuance) Act, 2011 to clarify the roles of the State government and the MWRRA in Sectoral Allocation and Entitlements and submitted the same in the High Court with a copy to the Authority.



29/4/2011 → The Authority once again directed the Respondents to send their point wise reply to the Petition by 29/5/2011.

6/6/2011 → The Authority fixed the hearing of the Petition for 30/6/2011 and served notice on all the Parties allowing the Respondents further time to file a point wise reply by 20/6/2011.

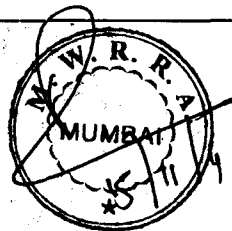
17/6/2011 → Respondents filed their reply dated 14/6/2011 through the Executive Engineer, KIDC. A copy of the same was served on the Petitioners.

30/6/2011 → Hearing of the Petition was held on 30.6.2011.

(i) On the date of the hearing the Respondent filed a revised Say and Affidavit dated 29/6/2011 in supersession of the reply filed on 14/6/2011 and a copy of the same was served on the Petitioners during the hearing.

(ii) Petitioner also made further written Submissions (No. 1, 2 & 3) which were taken on record. These were mainly in response to the reply submitted by the Respondents on 14/6/2011. A copy of the Submissions was given to the Respondents;

(iii) After hearing both sides, the Respondent was directed by the Authority at the hearing to furnish additional information on the status of



various permissions given to non-irrigation users and on the status of land acquisition for the project by 28/7/2011.

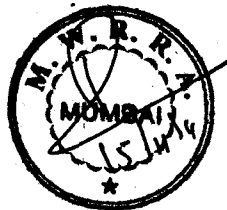
4/7/2011 → Record of proceedings was issued by the Authority. Time of four weeks, up to 28/7/2011, was given to the Petitioners to give their response to the revised reply of the Respondent; Similar time was given to Respondent to submit information relating to status of water availability, land acquisition, etc.

27/7/2011 → The Petitioners filed responses to revised reply of 29/6/2011 with a copy to the Respondent.

3/8/2011 → Respondent filed their reply to the record of proceedings on 30/06/2011 comprising additional information sought by the Authority during hearing and comments on the Submission no.1 filed by the Petitioner on 30/6/2011 during the hearing

8/8/2011 → Respondent served a copy of the Comments and the additional information on the Petitioners on the directions of the Authority.

14/9/2011 → Authority heard the matter again on 14/9/2011. The Petitioners filed a written submission in response to the comments and the information submitted by the Respondent.



3. **The Hetavne Project**

- (i) From the various submissions made and data furnished before the Authority by WRD it is seen that the Hetavne medium irrigation project was originally accorded Administrative Approval (AA) by WRD on 8/1/1981 to irrigate 6753 ha. The project was subsequently revised on two occasions and the third revised AA approved on 17/6/2008 envisages irrigation of 6056 ha. The main reason for the reduction in irrigation was exclusion of 612 ha of saline land. The live storage of the project is 144.98 Mm³.
- (ii) As per the earlier plan a total of 38.83 Mm³ was allocated for non-irrigation users comprising 2.33 Mm³ for Pen Water Works and rest 36.50 Mm³ for CIDCO. The balance of about 106 Mm³, less evaporation loss of 7.4 Mm³, was meant for irrigation. However, thereafter, a number of further allocations, of temporary and permanent nature, were made from time to time in favour of other non-irrigation, i.e. domestic and industrial, users including the Maha Mumbai Special Economic Zone (MMSEZ). These allocations, totaling about 70.3 Mm³, meant a drastic curtailment in the water allocable for irrigation in the earlier plan from 98.80 Mm³ to 28.50 Mm³. This is the gravamen of the Petitioners. It seeks cancellation of the additional allocations to non-irrigation users and restoration of the original allocation to irrigation.

4. **Petitioner's Case**

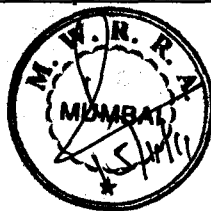
The following arguments have been advanced by the Petitioners in their Petition filed before the Authority

- (i) As per Section 11(a) of the MWRRA Act 2005 the Authority is empowered to determine and distribute water entitlements. The preamble of the MWRRA Act 2005 also requires the Authority to ensure judicious and

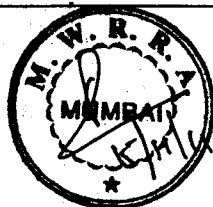


equitable distribution of water within each category of use in the state of Maharashtra. Hence, from the date of the enactment of the MWRRA Act 2005 all decisions relating to water distribution from all projects can be taken only in terms of the provisions of the MWRRA Act 2005 and the powers vested in the Authority by the Act. This includes decisions taken by the High Power Committee (HPC) wherever such decisions impact, directly or indirectly, entitlement, allocations and quotas of water issued from the concerned projects.

- (ii) Once changes are made in water distribution, they lead to creation of new rights on water use which are difficult to reverse because of the investments in infrastructure which the new users are required to make for securing them. Hence such changes severely impact the right to equitable distribution assured by the MWRRA Act 2005.
- (iii) Since every landholder is entitled to get his due share of water under section 12 (6) (a) and (b) of the MWRRA Act the reduction in the water for irrigation at Hetavne by the HPC by reserving additional water for non-irrigation users is not lawful.
- (iv) As per the Authority's Order (dated 10/11/2008 in Case no 1 of 2008) relating to the privatization of the Nira-Deoghar Irrigation Project it was made clear by the Authority that the farmers should get all the benefits which they were assured as per the original 'cost and benefit analysis' of the project. It is averred by the Petitioners that as per the original plan of the Hetavne Project about 6668 ha. of irrigation is to be achieved but due to the decisions of the HPC making changes in the original water distribution plan this irrigation potential is reduced. This is contrary to the orders of the Authority in the Nira-Deoghar case.



- (v) The proposal of the Respondents that the new water users should pay a certain amount of money to government as compensation for reduction in the water for irrigation, based on which HPC decided to make additional water reservations for non-irrigation users, has no legal basis. Further, this compensation amount is decided without accounting for the losses to farmers who were the original beneficiaries of the project and there is no consultation with the farmers in this regard.
- (vi) As per the notice of the HPC meeting, WRD has recommended collection of capital contribution from new non-irrigation users in exchange for water reservations. This would lead to changes in the revenue model of the project and creation of rights over water use. Therefore, the proposal for collection of capital contribution is required to be reviewed and approved by the Authority under Section 11(a) and 11(f) of the MWRRA Act 2005.
- (vii) Changes in water distribution involve changes in land use and cropping patterns affecting the lives and livelihood of people. The data on the basis of which these decisions are taken should be analysed by a competent and independent authority. MWRRA is such an authority and the data should have been submitted by WRD to MWRRA for review, validation and approval.
- (viii) The Rules for Entitlement have not been finalized by the State Government as per Section 11 (a) of the MWRRA Act 2005 even after five years from the enactment of the MWRRA Act 2005. However, since making rules is the discretion of the Government, the absence of such rules does not mean that the legal provisions relating to entitlements and water distribution can be contravened. The Authority is empowered to undertake action in this regard even in the absence of the rules and this is already being done in some pilot projects.

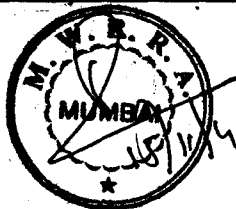


- (ix) The changes in the allocations of the original distribution plan have been challenged by the Petitioners on the ground that the power to determine and distribute entitlements is with the MWRRA and not with the WRD / HPC and the changes made by the latter are hence unauthorized and contrary to law.

5. Respondent's Reply

5.1 The Respondent first filed a Reply on 14/6/2011. The arguments are summarized as below

- (i) The processes of seeking approvals of HPC were initiated before the enforcement of the MWRRA Act.
- (ii) Under Section 11 g (ii) of the MWRRA Act, bulk water Entitlements at project level can be done by the River Basin Agency. Hence provisions of MWRRA Act are not violated. Section 11 (f) is for new projects.
- (iii) Land acquisition procedure for canals was started in 1988–89. But since there is constant opposition from farmers, procedure has been stopped.
- (iv) Presently irrigation potential to the tune of 1301 ha has been created. However the utilization by beneficiaries is only 125 ha.
- (v) Amount payable as compensation for reduction in irrigation potential and capital contribution are decided as per relevant Government orders.
- (vi) Though no rules have been framed for Entitlement, Govt. of Maharashtra has fixed the priority for the same.
- (vii) State Water Policy & KIDC Act also needs to be taken cognizance of.



5.2 The Respondents in their Say and Affidavit, both dated 29/6/2011, submitted in supersession of the earlier reply dated 14/6/2011, have contended that the Petition is not maintainable in the light of various provisions of the Amendment Act of 2011. The arguments are summarized below.

- (i) As per Section 31 (A) of the Amendment Act 2011, the term Entitlement applies only to such areas where all relevant provisions of the MMISF Act, 2005, including delineation of the land, have been complied with.

The provisions of the MWRRRA Act are not applicable to all projects and the Hetavne project does not come under the Authority as per the amended act;

- (ii) Under Section 31 (B) in the Amendment Act 2011, all permissions granted by HPC prior to 17/9/2010, being the date of commencement of the Amendment Act shall be deemed to have been granted according to the provisions of the MWRRRA (Amendment) Act.
- (iii) Under Section 31 (C) in the Amendment Act 2011, no suit, prosecution or any other legal proceedings shall lie or continue before any Court, Tribunal or any other authority challenging such allocations by HPC made prior to 17/9/2010 being the date of commencement of the Amendment Act on the ground that any permission, allocation, sanction, authorization or entitlement as required under the Act has not been obtained. Hence the Petition is not maintainable.
- (iv) Presently an irrigation potential of 1301 ha has been created but the demand for water from the farmers is low and the actual irrigation in the command area has never exceeded 125 ha. Therefore, to say that diversion of water for non irrigation purposes has affected irrigation is not correct as even the limited infrastructure created so far is not utilized by the beneficiaries. Hence the



utilization of water for non- irrigation purposes on a temporary basis is justified.

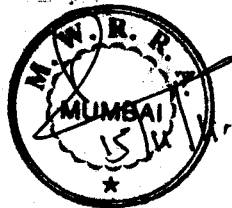
- (v) None of the other points raised in the Petition have merit in view of the Amendment Act of 2011. Even otherwise the Petition is filed three years after the decision of the HPC and hence the general law of limitation would have applied.

6. **Issues raised by Petitioners in their Submissions No. 1,2 and 3 on 30/6/2011**

Although the Submissions of 30/6/2011 were mainly in response to the earlier reply of the Respondents dated 14/6/2011, which was later superseded by the revised reply, there are some points in the submissions which are pertinent to the revised reply as well and the same are summarized below:

Submission No 1

- (i) In the light of the suspension and withdrawal of the plan for setting up the Maha Mumbai Special Economic Zone (MMSEZ), 2401 ha of irrigation land in the command area, which was acquired for industrial use for the MMSEZ, is now back into the irrigation land category.
- (ii) Water reservation for some of the non-irrigation user entities which were made in December 2007 lapsed automatically as they did not make arrangements to lift the water within the prescribed time limit of three years.
- (iii) The saline land of 612 ha, which Konkan Irrigation Development Corporation claims cannot be irrigated can be reclaimed.



Submission No 2

- (i) Farmers are keen to get water for irrigation and have submitted written applications for the same but there is no response from the officials.
- (ii) The reason for low utilization of water for irrigation is not lack of demand from farmers. There are many reasons such as technical flaws in the distribution system, low reliability and the mis-match of rotations with crop needs. The distribution system also needs to be completed. Hence there is a need to assess the reasons for low utilization.
- (iii) There is tendency for temporary allocations to be converted to permanent ones as evidenced by the reservations made for CIDCO. The only way of disallowing such conversions is to make permanent reservations for the irrigation sector.

Submission No 3

- (i) MWRRA has unduly delayed the processing of the Petition which has led to erosion of the opportunity to get justice based on the principal Act. The Petition was delayed for more than a year and the Amendment Act was passed during that period which affected the arguments of the Petitioner. MWRRA has not given any reasons for this delay in the proceedings.

7. Response dated 27/7/2011 of the Petitioners to the revised reply of the Respondents of 29/6/2011

- (i) The provisions and criteria relating to Entitlement are eternal and their adherence should not be constrained by the timing of the applicability of the said provisions.



Eventually all the irrigation land in the command of all projects will be delineated under MMISF and protection of water rights of farmers will be needed as and when the WUAs are formed in the future. Under section 12 (6) MWRRA is bound to act in a manner that will ensure water for all farmers in the command area regardless of when the land is delineated.

- (ii) The Petition was filed before the amendment in the Principal Act. WRD's action (of reducing irrigation potential by issuing non-irrigation permits) is now being justified after the amendment is passed.
- (iii) Nowhere in the amended Act is it mentioned that permission, allocation, sanction, authorization of Entitlement of water granted by HPC shall be valid even if there are major changes in the facts that were considered while granting such allocation.
- (iv) In reply to the point regarding delay in filing Petition and the general law of limitation the Petitioners have stated that the decisions of HPC were neither taken in public (to the knowledge of the public) nor published anywhere as a result of which the Petitioners were not aware of the fact that water reservations for non-irrigation users had been made. The information with regard to the aforesaid decision was obtained using right to information vide the Respondent's letter dated 15th April 2010 and thereafter the present Petition was filed on 20th April 2010 before the Authority.

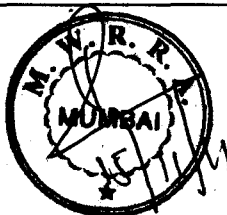
8. **Information relating to the Status of water allocations and land acquisition submitted by Respondents**

- (i) In their letter dt. 3/8/2011, Respondent has given the status of various non-irrigation allocations which is as under



Sr No	Name of Agency	Water use sanctioned (Mm ³)	Reduction in area in ha	Compensation received for area reduction (Rs. Lakhs)	Capital contribution received (Rs. Lakhs)	Remarks
Permanent Reservation Drinking						
1.	CIDCO, Navi Mumbai	36.50 (without losses)	-	-	4700	Water lifting is in progress
2.	CIDCO, Navi Mumbai	18.25 (Without losses)	1241	-	900	Water lifting not yet started.
3.	Vashi Water Supply Scheme	0.27 (Without losses)	26	13.00	-	-do-
Permanent Reservation Industrial						
4.	Ispat Hydro Project, Pen taluka	23.40	1489	-	-	Allotment cancelled vide letter dt. 19/7/2011
5.	Tata Power Co., Pen taluka	5.34	340	-	-	Allotment cancelled vide letter dt. 21/7/2011
Temporary Reservation Industrial						
6.	CIDCO, Navi Mumbai	13.555	-	-	-	Allotment cancelled vide letter dt. 1/8/2011
7.	Maha Mumbai SEZ, Pen taluka	9.510	-	-	-	Allotment cancelled vide letter dt. 19/7/2011

The allocation for non-irrigation was 38.83 Mm³ as per earlier plan. An additional 18.50 Mm³ has been allocated as per the revised plan for CIDCO & Vashi Water Supply bringing the total to 57.33 Mm³. There is thus a reduction in the allocation for irrigation to about 80 Mm³ which can irrigate about 5450 ha against the originally planned 6056 ha with 98.80 Mm³ allocation.



- (ii) In regard to land acquisition, the Respondent has furnished the following data

<u>Category-wise land required</u>	<u>Ha</u>
Private	245.63
Forest	33.05
Total	278.68
 <u>Land Acquired so far</u>	
Private	168.96 (payment made)
Forest	27.83
Total	196.79
Land under acquisition - likely to be completed in 2-3 years	56.65
Land acquisition where problems faced due to small holdings, rate for compensation etc.	20.02

Thus out of the 278.68 ha land proposed to be acquired 196.79 ha has been acquired, 56.65 ha is under acquisition and 20.02 ha is under dispute.

- (iii) Respondents have further stated that Government has no proposal under consideration for conversion of temporary diversion into a permanent one and there is no necessity for any review by MWRRRA. It is also denied, on the basis of data of water released in the last 3 years, that farmers are being denied water.

9. Comments of the Respondents dated 3/8/2011 on (i) Record of Proceedings of 30/06/2011; and (ii) Responses of the Petitioner through Submission No 1, 2 & 3

- (i) In the record of proceedings Respondent has been asked to reply to the three Submissions of the Petitioners



referred to in Para 6 of this order. Comments on Submission no. 1 are offered separately. Submission no. 2 being in response to the earlier reply of the Respondent dated 14/6/2011 and the said reply having been superseded by the revised reply of 29/6/2011 no comments are offered. Submission no. 3 concerns the Authority and not WRD and hence no comments are offered.

- (ii) Information sought by the Authority in respect of the status of the work and land acquisition is not relevant as review of the progress of the project comes within the purview of WRD and not the Authority.
- (iii) Water allocation of 51.805 Mm³ has been cancelled because arrangements for lifting the water were not made within the three year limit and restored to irrigation bringing the total irrigation allocation to about 80 Mm³ against the original 98.80 Mm³. This is enough to irrigate about 5450 ha which means a reduction of 1220 ha in the original irrigation potential of about 6670 ha. This is entirely due to the needs of drinking water.
- (iv) Since all non-irrigation reservations approved by the HPC have been cancelled there is no need for any intervention by the MWRRA.

10. Submission by Petitioner dated 14/9/2011 in response to Respondent's reply of 3/8/2011

- (i) No comments have been offered by the Respondent on Submission No. 2 on the grounds that the earlier reply of 14/6/2011 was superseded. It is therefore presumed that the Respondent has accepted the arguments and prayers of the Applicant in submission no.2.



- (ii) MWRRA is fully authorized by various provisions in the Act to review (i) construction work on the project; and (ii) removal of physical backlog in Konkan.
- (iii) In the light of suspension of the MMSEZ the work on construction of the distribution system in the 2401 ha. meant for the MMSEZ should be started immediately
- (iv) MWRRA should issue instructions that in no case should the reservation to any non irrigation user be reinstated.
- (v) Entitlements to non irrigation users should not be issued till the compliance to all relevant provision of MMISF Act is achieved. This is essential to safeguard the rights of farmers.
- (vi) Only a meaningful dialogue with farmers seeking water and opposing the project will solve the issues relating to land acquisition.
- (vii) It is possible for CIDCO to reduce losses. Water use review should be undertaken by MWRRA to ensure that water reserved for drinking is not used for commercial purposes.

11. Issues for consideration

11.1. From the arguments advanced in the Petition and the Respondent's reply, four issues arise for consideration :-

- (i) Whether the Amendment Act of April 2011 is applicable to the Petition which was filed in April 2010 when only the principal Act of 2005 was in force?
- (ii) Can MWRRA intervene to cancel the allocations made to non-irrigation users in Hetavne Medium Water Project by the State Government regardless of whether the Amendment Act is applicable?



- (iii) Whether consequent upon the various cancellations made by the Respondent in July 2011 to non-irrigation allocations from the Hetavne project and restoration of 51.80 Mm³ of water to irrigation use, the grievance of the Petitioner stands substantially redressed?
- (iv) If not then can and should the Authority intervene to redress grievances of the Petitioner under any other provision of the principal Act?

The findings of the Authority on the above issues are discussed below:-

11.2. Issue (i) :-

- (i) The position of law is that a statute and its amendments, as in force on the date the decision is to be determined must be applied. Hence, the Amendment Act necessarily must be applied in the present case. In any case, Section 1(2) of the Amendment Act states that "Sections 2 to 6 shall be deemed to have come in force on 8th June 2005." Hence, even though the Amendment Act itself came into force on 17th September 2010 the provisions under Sections 2 to 6 operate retrospectively i.e., w.e.f., 8th June 2005. Therefore, the Amendment Act has to be applied in deciding the issues raised in the present Petition in so far as they relate to sections 2 to 6 of the Amendment Act.
- (ii) Section 2 of the Amendment Act has introduced the "High Powered Committee" and "sectoral allocation", which have been defined as follows--

"(k-1) "High Powered Committee" means the committee constituted by the State Government under the Government Resolution, Irrigation Department No. Misc. 1001/(154-01)/I.M-(P) dated the 21st January 2003."



"(u-1) "sectoral allocation" means the allocation made in a water resources project by the State Government to the various Categories of Use."

The above definitions stand inserted in the Principal Act. Thus all the functions of the HPC as stated in the GR dated 21st January, 2003 are built into the statute. The definition of sectoral allocation is clearly distinguishable from "Entitlements" which is defined in the principal Act as any authorization by any River Basin Agency to use the water for purpose of the Act.

- (iii) Section 3 of the Amendment Act effects certain vital changes in the functions of the Authority as follows -----

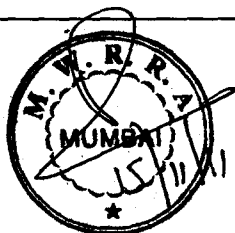
"In section 11 of the principal Act--

"(1) for clause (a) the following clause shall be substituted namely:--

"(a) to determine the criteria for the distribution of Entitlements by the River Basin Agencies within each Category of Use on such terms and conditions as may be prescribed, after sectoral allocation is made under section 16A"."

In terms of the erstwhile clause (a) of section 11 of the MWRRA Act 2005 the Authority was mandated to determine the distribution of entitlement for various categories of use. In the Amendment Act it is clarified that the Authority's jurisdiction is limited to determining the criteria for distribution of entitlement by the River Basin Agencies (RBAs) *within* each category of use *after* sectoral allocation is made by the State Government. The Amendment Act 2011 defines "sectoral allocation" and confers powers on the State government to make sectoral allocation to various categories of users. The power to make sectoral allocations includes the power to change sectoral allocations upwards or downwards.

- (iv) Section 31 A of the Amendment Act 2011 provides for the Authority to step in to grant Entitlements only after the project comes within the purview of the MMISF Act 2005 i.e. the term



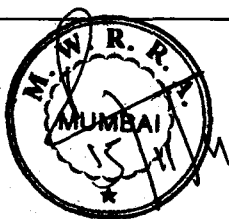
“entitlement” shall apply to such areas where compliance of all relevant provisions including delineation under MMISF Act is made. Such compliance has not been made in the Hetavne Medium Irrigation Project by the State Government as is evident from Respondent’s reply dated 29/06/2011.

- (v) In terms of section 31B of the Principal Act inserted by section 6 of the Amendment Act any person to whom an allocation has been granted by the High Power Committee or the State Government prior to 17th September 2010 shall be deemed to have been granted in accordance with the Act and the same is mandated to continue. In terms of section 31C no legal proceedings shall lie challenging such an allocation. Both the aforesaid sections 31B & 31C are *non obstante* in nature i.e., in case of conflict they would override other provisions of the Principal Act or any other law for the time being in force.

In view of the above, the objections raised by the Petitioners against the Water Resources Department of the State Government making changes in the pattern of water distribution from the Hetavne Project through the High Power Committee without considering the provisions of the MWRRA Act cannot be countenanced in law and these objections have to be treated as being unsustainable. The power to make sectoral allocations vests with the State Government. The power to determine the criteria for issue of entitlements vests with the Authority but only in respect of projects which are covered by the MMISF Act. The allocations made by the State Government prior to 17th September, 2010 are to be treated as having been given as per the MWRRA Act and cannot be challenged in any legal proceeding. In view of the aforesaid position in law there is no need to dwell any further on the details of the objections raised by the Petitioners.

11.3. Issue (ii) :-

- (i) Section 12 (6) of the principal Act which falls in the category ‘General policies of the Authority’ requires the Authority to fix



quota at project level to every land holder in the command on the basis of land in the command. However, the term Quota is defined as a quantity of water derived by multiplying the Entitlement by the annual or seasonal allocation percentage. It is thus a derivative of Entitlement. Since Section 31 A of the Amendment Act clarifies that the term 'Entitlement' shall apply to only such projects where compliance of all relevant provisions, including delineation, under the MMISF Act is made, the term 'Quota' also perforce refers to authorization issued by RBAs only to such projects. The Hetavne project has not yet made compliances under the MMISF Act and thus Section 12 is not applicable. The project is, therefore, governed by Section 58 of the Maharashtra Irrigation (MI) Act 1976 where a farmer has to apply for water directly to the Canal Officer.

- (ii) As far as the reference to Para 12 of the Nira-Deoghar Irrigation Project order dated 10/11/2008 in Case No 1 of 2008 issued by the Authority, the same is misplaced as the said Para deals with clearance of projects under Section 11 (f) of the MWRRA Act after they are decided to be implemented through the PPP mode of funding. The said Para has no relevance to rights of farmers to water under a project.
- (iii) It is argued that the applicability of the Amendment Act to Hetavne is only a matter of time since eventually all projects would be covered by the MMISF Act. It can be argued in this logic that if non-irrigation users are given reservations over and above those planned before the project is brought under MMISF Act then the rights of farmers would be affected for no other reason than the fact that there has been delay in bringing the project under MMISF Act. However, this is a policy issue which cannot be agitated before the Authority which is bound by the provisions of the Amendment Act. Even in respect of projects within the MMISF regime there is no provision in the Act for the Authority to intervene or prevent changes in the sectoral allocations between categories since sectoral allocations are



clearly defined as being within the purview of the State Government as per Section 2 (u-1) of the Amendment Act.

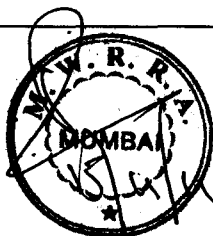
In view of the above there is no scope for the Authority to intervene and cancel reservations of water made in favour of non-irrigation users from the Hetavne Project. The Amendment Act prevails above the principal Act since the terms used in the principal Act stand amended.

11.4. Issue (iii) :-

- (i) Subsequent to the first hearing on 29/6/2011, the Respondent has in July 2011 cancelled all the non-irrigation allocations made to industrial users on the grounds that their utilization by the user had become time barred. Thus a quantum of 51.805 Mm³ has been restored for irrigation use. The area that can now be irrigated out of the revised planned area of 6056 ha is about 5450 ha i.e. 90% of 6056 ha.
- (ii) As a result of this restoration, as per figures provided by the WRD, about 90% of the planned area can now be irrigated. Since the State Water Policy gives preference to drinking water over irrigation and since there is no industrial user left after the cancellation the Petitioner's grievance seeking restoration of the irrigation reservations stands substantially redressed.

11.5. Issue (iv) :-

- (i) As per the MWRRRA Act, the Authority has jurisdiction only at clearance stage of projects and not their implementation. The WRD through the concerned field division/circle/CE is responsible for detailed survey, land acquisition, funding and construction planning, etc. No review of such activities by MWRRRA is provided for in the Act.
- (ii) In regard to backlog, the Authority has to follow the Governor's directives. Specific monitoring functions for projects in



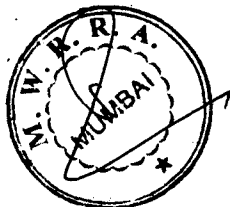
identified regions are entrusted to the Authority for removal of physical and financial backlog. Raigad district in Konkan, where Hetavne project is located, is not a backlog district and no specific role has been assigned to the Authority to monitor the projects in this district.

Hence, there is no scope for the Authority to intervene to redress grievances of the Petitioner under any other provision of the principal Act.

In view of the above, the prayers of the Petitioners are hereby rejected.

12. Observations

- (i) The prayer that WRD should not undertake any further processing of current and future proposals is mainly to seek protection from future curtailments in the irrigation reservations in the face of possible new demands from the non-irrigation users. The apprehension of the Petitioners with regard to future curtailments in the allocation for irrigation does not get entirely mitigated as a result of the cancellations of the reservations for the industrial category of non-irrigation users. Until the project gets MMISF cover, sectoral allocations will remain susceptible to changes based on priorities of felt needs as perceived by the government. However, once such cover becomes available, protection to all categories of users is afforded by (a) Section 5 of the Amendment Act which states that allocations would ordinarily be reviewed after an interval of not less than three years; and (b) Section 11 (h) of the Principle Act in respect of such changes in sectoral allocations which impact entitlements already issued within each category.
- (ii) Now that the issue of sectoral water allocation is settled, WRD should take all steps to speedily implement the project so that the investment made in storage creation is



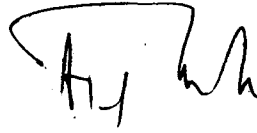
brought to early fruition. The suggestions of the Petitioners for creation of a consultative mechanism with stake holders to remove the bottle-necks in construction and land acquisition merit consideration.

- (iii) WRD should also keep in view the relevant provision in MMISF Act for construction of the distribution system below 1 cumec in consultation with WUAs. This would ensure quicker utilization of created potential.

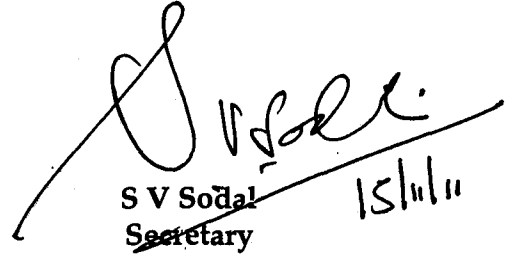
Accordingly, with this observation, the Petition stands dismissed.



V V Gaikwad
Member (Engineering)



A K D Jadhav
Member (Economy) &
Presiding Chairman



S V Sohal
Secretary

15/11/11

